

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

AWARD

Department of Labour

Order

No. CL/PUB-Awards/97/1556

The following Award dated 18-3-97 in Reference No. IT/74/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 25th March, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding
Officer)

IT/74/96.

Workmen

Rep. by the President

Goa Trade & Commercial

Workers Union

Panaji-Goa.

— Workmen/Party I

v/s

M/s Tarkar Automobiles Pvt. Ltd.,

Panaji-Goa.

— Employer/Party II

Workmen/Party I represented by Adv. Shri Raju
Mangueshkar

Employer/Party II represented by Shri Dilip Lotlikar

Panaji, dated: 17-3-97.

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12th November, 1996 bearing No. IRM/CON/(21)/96/ 12053 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Tarkar Automobiles Pvt. Limited, Panaji Goa in refusing to consider the demands of the workers as mentioned in Schedule "A" annexed hereto, is legal and justified?

If not, to what relief the workmen are entitled?"

The schedule is appended with as many as 8 demands for:

(1) Proper Gradation of Workers, (2) Fixed Dearness Allowance, (3) Variable Dearness Allowance, (4) House Rent Allowance (5) Uniform and Washing Allowance, (6) Overtime Allowance (7) Leave Facilities and (8) Special Seniority -Based Increments.

2. On receipt of the reference, a case was registered under No. IT/74/96 and registered AD notices were issued to the parties. In pursuance to the said notice, the Parties put in their appearance. The workmen/Party I (For short Party I) were represented by Adv. Shri R. Mangueshkar and the Employer/Party II (For short Party II) were represented by Shri Dilip Lotlikar. The Party I and the Party II filed an application dated 3-3-97 at Exb. 3 stating that the establishment of the Party II has been closed from 15-1-97 and a memorandum of settlement dated 16-1-97 has been signed before the Deputy Labour Commissioner wherein the Party II agree to pay all legal dues of the workmen in full and final settlement of all their claims. The parties enclosed along with the application a copy of the settlement dated 16-1-97. The parties stated that in terms of clause (3) of the settlement, the Party I agree to withdraw the charter of demands made against the party II since the establishment of the party II stands closed. The parties stated that since the charter of demands has been withdrawn, the reference may be treated as settled. I have gone through the settlement dated 16-1-97 produced by the parties alongwith the application

dated 3-3-97 Exb. 3. Clause (3) of the said settlement states that the charter of demands pending for adjudication in reference No. IT/74/96 stands withdrawn. Since, as per the settlement arrived at between the party I and the Party II, the Charter of demands stands withdrawn, the dispute does not exist and the reference does not survive.

In the circumstances, I pass the following order:

ORDER

It is hereby held that the reference does not survive since the dispute does not exist in view of the withdrawal of the Charter of demands by the workmen/Party I.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/PUB-Awards/97/1850

The following Award dated 1-4-1997 in Reference No. IT/8/93 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 15th April, 1997.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

IT/8/93

Shri Raju Phekde,
C/o Shri K. V. Nadkarni
C/o Goa Trade and Commercial
Workers Union
Velho Building, 2nd Floor
Panaji-Goa

— Workman/Party I

V/s

M/s Shubhdwar Engineering Pvt. Ltd.,
C/o Shri Adesh V. Shah,
B-12, Gokul Niwas,
4, Prakash Kholnis Marg,
Mahim, Bombay 400016

— Employer/Party II

Workman/Party I - Represented by Shri K. V. Nadkarni
Employer/ Party I - Ex-parte

Dated: 1st April, 1997.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 the Government of Goa, by order dated 23-12-92 bearing No.28/51/92-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Shubhadwar Engineering Pvt. Ltd., Nessai, in refusing employment to Shri Raju Phedke, w.e.f. 4-7-92 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/8/93 and registered A/D notice was issued to the parties. The workman/Party I (For short "Workman") was duly served with the notice and filed his statement of claim which is at Exb. 3. The Employer/Party II (for short "Employer") though was duly served with the notice did not appear and hence the case was proceeded ex-parte against the employer.

3. The facts of the case in brief as pleaded by the workman are that he was employed with the employer as a press-man with effect from 5-3-1988 on daily wages at the rate of Rs. 45/- per day. That subsequently a settlement was arrived at on 31-8-1990 between the workman and the employer whereby the salary of the workman was raised to Rs. 55/- per day. That since the employer was not adhering to the provisions of various acts and rules, the workers made a complaint to the Dy. Labour Commissioner, Margao and upon discussion held, an agreement was signed whereby the employer agreed to pay various benefits to the workmen including overtime and bonus. That since the signing of the said settlement, the employer started harassing the workers by various means. That on 4-7-92, when the workman reported for duties as usual, he was refused employment without any written orders and he was asked to go away. That the workman thereafter wrote a letter dated 8-7-92 to the Manager of the employer complaining about the refusal of the employment to him on 4-7-92 and a copy of the said letter was sent to the Dy. Labour Commissioner, South Goa, Margao. That in the conciliation proceedings held by the Dy. Labour Commissioner on 23-7-92, the employer agreed to consider as if the workman was retrenched and also agreed to pay all the terminal benefits arising out of retrenchment. That a memorandum of settlement was typed and kept ready for signing on the next day, but the employer failed to appear nor paid terminal benefits to the workman, and the conciliation ended in a failure. The workman stated that he was unemployed since the termination of his services on 4-7-92. The workman contended that the action of the employer in refusing employment to him w. e. f. 4-7-92 is illegal and bad in law, and hence he is entitled to be reinstatement with full back wages.

4. Since the employer did not appear inspite of being duly served, the case was proceeded ex-parte against the employer. Consequently there is no written statement filed on behalf of the employer. Ex-parte evidence of the

workman was recorded which is on record. The workman has examined only himself. In his deposition, the workman has stated that he was employed with the employer since 5-3-88 and letter of confirmation of appointment was issued to him dated 26-9-91. He produced the said letter at Exb. W-1. He stated that at the time when he was employed he was paid wages at the rate of Rs. 45/- per day which was subsequently increased to Rs. 55/- per day and that his salary was paid at the end of the month. He produced the agreement Exb. W-2 executed between him and his employer in respect of the wages paid to him. He produced the declaration form 1-B Exb. W-2 submitted by the employer to the ESI Corporation. He stated that the employer used to issue to him wage slip and he produced the wage slip dated 7-8-91 Exb. W-4. He also produced a slip Exb. W-5 mentioning the amounts deducted from his wages towards Provident Fund Contribution. He stated that by letter dated 8-7-92, he had complained to the Manager of the employer as regards termination of his services on 4-7-92 and produced the copy of the said letter dated Exb. W-8. He further stated that upon his complaint, the Dy. Labour Commissioner, Margao called the employer for discussion on 15-7-92 at 3.30 p. m. by letter dated 10-7-92 and produced the copy of the said letter at Exb. W-9. He also produced the copy of the proceeding sheet of the conciliation proceeding dated 17-8-92 Exb. W-19 and stated that there is a reference made to the draft settlement in the said proceedings of 17-8-92 and he also produced the failure report Exb. W-12. The workman stated in his deposition that termination of his services by the employer w. e. f. 4-7-92 is illegal and further stated that the factory of the employer is permanently closed from 15-12-92. The workman therefore prayed for appropriate relief till the date of the closure of the factory.

5. In this case, the deposition of the workman has gone unchallenged. I have no reason to disbelieve the statement of the workman which is made on oath. From the letter of confirmation of employment Exb. W-1, the Agreement Exb. W-2, the declaration Form Exb. W-3 and the slip Exb. W-5 showing contribution towards Provident Fund, the workman has succeeded in proving that he was in the employment of the employer from 5-3-88 on payment of wages of Rs. 45/- per day. The wage slip Exb. W-4 shows that the wages of the workman were subsequently increased to Rs. 55/- per day. The workman has also produced the minutes of the conciliation proceeding dated 17-8-92 Exb. W-10. In the said minutes, it has been stated that the representative of the employer had agreed to pay an amount of Rs. 12,470/- to the workman and to sign a settlement to that effect, which he ultimately did not do. The workman has deposed that he was refused employment on 4-7-92 when he reported for work and he made a complaint to that effect on 8-7-92 to the Manager of the employer. He has produced the said complaint at Exb. W-8. The minutes of the conciliation proceedings dated 17-8-92 Exb. W-10 nor the failure report Exb. W-12 show that the employer at any time denied that employment was refused to the workman on 4-7-92. On the contrary, the minutes Exb. W-10 shows that the employer had agreed to pay Rs. 12,470/- to the workman on account of termination of his services. The entire evidence, oral as well as documentary, has gone unchal-

lenged. Therefore, from the evidence which is discussed above, I hold that the workman has succeeded in proving that he was in employment of the employer from 5-3-88, his last drawn salary was Rs. 55/- per day and that he was refused employment from 4-7-92. The employer did not comply with the provisions of Sec. 25F of the I.D. Act, 1947 while refusing employment to the workman. I therefore, held that the action of the employer in refusing employment to the workman w. e. f. 4-7-92 is not legal and justified.

6. Now the question is what relief should be granted to the workman once it is held that the termination is not legal and justified, the normal rule is to reinstate the workman in service with full back wages and other consequential benefits, unless there are reasons for not doing so. There is no evidence on record to show that the workman was or is gainfully employed after employment was refused to him. In the present case, the workman himself in his deposition has stated that the factory of the employer is closed permanently from 15-12-92. This being the case, the relief of reinstatement cannot be granted to the workman. However, the workman shall be entitled to full back wages from the date of termination of his service i. e. from 4-7-92 till the date of permanent closure of the factory, that is till 15-12-92 with all consequential benefits including closure compensation and I hold so accordingly.

In the circumstances, I pass the following order:

ORDER

It is hereby held that the action of the employer M/s Shubhawar Engineering Private Limited, Nessai, in refusing employment to the workman Shri Raju Phedke, w.e.f. 4-7-92 is not legal and justified. It is hereby further held that since the factory of the employer M/s Shubhdwar Engineering Pvt. Ltd., is permanently closed from 15-12-92, the workman Shri Raju Phekde is entitled to full back wages from the date of refusal of employment to him till the date of permanent closure of the factory, that is from 4-7-92 to 15-12-92 with all consequential benefits, including closure compensation.

There shall be no order as to cost. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No.CL/Pub-Awards/97/2049

The following Award dated 15-4-1997 in Reference No.IT/32/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section (1) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.
R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 5th May, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding
Officer)

IT/32/96

Workmen

Rep. by the President

Goa Trade & Commercial

Workers Union

Velho Building, 2nd Floor

Panaji-Goa

— Workmen/Party I

V/s

M/s Chaman Lal Secodia

Contractor of

M/s Hindustan Ciba Geigy Ltd.,

Corlim, Ilhas Goa.

— Employer/Party II

Workmen/Party I represented by Adv. Shri P. J. Kamat

Employer/Party II represented by Adv. C. V. Pawaskar

Panaji, dated: 15th April, 97.

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order dated 4-6-96 bearing No.28/24/96-LAB referred the following issue for adjudication by this Tribunal.

"Whether the demand of the workmen employed as Contract labour by the management of M/s Chaman Lal Sesodia at Santa Monica Plant of M/s Hindustan Ciba Geigy Ltd, Corlim Goa, for full wages from 17-1-94 to 14-6-94 is legal and justified?"

If not, to what relief the workmen are entitled?"

2. On receipt of the reference, a case was registered under No. IT/32/96 and registered A/D notice was issued to the parties. Initially the workmen were represented by the Goa Trade & Commercial Workers' Union. However, on being served with the notice, the said Union filed an application alongwith the copy of the letter addressed to the President of the union by the workers, stating that the workmen have resigned from the said union and have joined the Kamgar Sabha. The Union prayed that the President of the Kamgar Sabha be impleaded in its place. Since as per the letter written by the workmen to the President of the Goa Trade & Commercial Workers Union, the workmen had joined the Kamgar Sabha and they had resigned from the membership of the said Union, the prayer of the Union was granted and Kamgar Sabha was substituted in its place as party I. The Kamgar Sabha was duly notified about the above proceedings. On 31-3-97 when the case was fixed for hearing. Kamgar Sabha filed an application stating that pursuant to cer-

tain developments which have taken place, it did not desire to pursue with the matter further and prayed that no dispute Award be passed. Adv. Shri Pawaskar representing the employer submitted that the employer has no objection for allowing the application filed by the Kamgar Sabha.

3. Since the Kamgar Sabha who represents the workmen in this case has stated that it does not desire to pursue with the matter the dispute does not exist and consequently the reference does not survive. In the circumstances, I pass the following order.

Order

It is hereby held that the reference does not survive since the dispute does not exist.

No order as to Costs.

Inform the Government accordingly.

(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards /97/2307

The following Award dated 15-4-1997 in Reference No.IT/2/95 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 22nd May, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding
Officer)

Ref. No. IT/2/95

Shri Paul Almeida,
Arpora,
Bardez-Goa

— Workman/Party I

V/s

M/s Casa Bela

Mapusa, Bardez-Goa

—Employer/Party II

Workman/Party I - Represented by Shri Subhash Naik
Employer/Party II - Represented by Shri A. Chandelkar.

Dated: 7-5-97.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section 1 of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order dated 16-12-94 bearing No.28/40/94-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Casa Bela, Mapusa, Bardez Goa, in terminating the services of Shri Paul Almeida, Barman, with effect from 13-10-93 is legal and justified?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/2/95 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (For short "Workman") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was employed with the employer/Party II (For short "Employer") as a Barman since 1988, and his monthly wages were Rs. 600/-. That in the month of September 1993, the employer asked the workman to deposit a certain amount towards contribution to Labour Welfare Board in the office of the Labour Commissioner, and accordingly, the workman deposited the amount of Rs. 278/- by cheque in the office of the Labour Commissioner, and a receipt was issued. That the office of the Labour Commissioner asked the workman to show the said receipt to the Asst. Labour Commissioner, Mapusa, which the workman accordingly did. That the Asst. Labour Commissioner asked the workman whether the employer had issued appointment letter to him and he replied in the negative. That when the workman told the employer what the Asst. Labour Commissioner had asked him, the employer got annoyed. That thereafter, on 13th October, 1993, when the workman reported for duty, the employer orally informed the workman that his services stood terminated w. e. f. 13-10-93 and no reasons were assigned, nor legal dues such as retrenchment compensation were paid to him as per Sec. 25 F of the I. D. Act, 1947. That the workman therefore, by letter dated 13-10-93 brought to the notice of the employer that termination of his services was illegal and unjustified and hence he should be reinstated with full back wages and continuity in service. That since the employer did not comply with the said demand of the workman, a dispute was raised before the Asst. Labour Commissioner. That however, the conciliation held by the Asst. Labour Commissioner ended in a failure. The contention of the workman is that since his termination of service is illegal and unjustified, he is entitled to reinstatement in service with full back wages.

3. The employer filed the written statement which is at Exb. 4. The employer stated that the establishment M/s. Casa Bela was taken over by the present owner Shri Suhas Keni during the pendency of the suit filed by the earlier owner Shri Francis Souza against Shri Terry Lobo who was managing the same as said Shri Terry Lobo agreed to vacate the premises as per the terms of compro-

mise filed in the said suit. The employer stated that the workman was employed on monthly salary of Rs. 500/- only after the taking over of the establishment of M/s. Casa Bela in the year 1992. The employer denied that the workman was employed as a Barman since the year 1988. The employer stated that the workman voluntarily resigned from service and at the time when he resigned he was paid a sum of Rs. 1200/- at his request. The employer denied that the workman is entitled to any relief as claimed.

4. Following issues were framed on the pleadings of the parties.

1. Whether the Party I proves that he was employed with the Party II as a Barman since the year 1988 on monthly wages of Rs. 600/-?
2. Whether Party I proves that the Party II terminated his services in contravention of the provisions of Section 25F, 25G and 25H of the Industrial Disputes Act, 1947?
3. Whether The Party I proves that the Party II terminated his services malafidely and by way of victimisation?
4. Whether the Party I proves that the termination of his services by the Party II w. e. f. 13-10-93 is illegal and unjustified?
5. Whether the Party II proves that the provisions of the I. D. Act, 1947 are not applicable to him?
6. Whether the Party II proves that the Party I voluntarily resigned from the service on accepting Rs. 1200/- from the party II?
7. Whether the Party I is entitled to any relief?
8. What Award?

5. My findings on the Issues are as follows:

- | | |
|--------------------|---|
| <u>Issue No. 1</u> | : In the negative |
| <u>Issue No. 2</u> | : In the affirmative as regards Sec. 25F and in the negative as regards Sec. 25 G and H of the I. D. Act, 1947. |
| <u>Issue No. 3</u> | : In the negative |
| <u>Issue No. 4</u> | : In the affirmative |
| <u>Issue No. 5</u> | : In the negative |
| <u>Issue No. 6</u> | : In the negative |
| <u>Issue No. 7</u> | : As per para 10 below |
| <u>Issue No. 8</u> | : As per order below |

REASONS

6. In the present case neither the workman nor the employer has led any evidence inspite of the opportunity given. Arguments were advanced only on behalf of the workman as none appeared on behalf of the employer. Shri Subhash Naik, representing the workman submitted

that the services of the workman were terminated on 13-10-93. He submitted that though no evidence has been led by the workman in support of his claim, still illegal termination of the services of the workman is proved from the averment made by the employer in the written statement. He submitted that at para 4 of the written statement the employer has admitted that the workman was employed in the year 1992 on wages of Rs. 500/- per month after the employer took the charge of the Bar and Restaurant M/s. Casa Bela. He submitted that the services of the workman were terminated in violation of the provisions of Sec. 25 F of the I. D. Act, 1947 and hence the termination is illegal and unjustified and this being the case, the workman is entitled to reinstatement with full back wages.

7. It is an admitted fact that neither the workman nor the employer has led any evidence in this case. In the claim statement the workman has contended that he was employed with the employer since the year 1988 on payment of the monthly salary of Rs. 600/-. The employer in the written statement denied this contention of the workman. Therefore, it was incumbent upon the workman to prove his contention by leading evidence. However, the workman did not even examine himself. I therefore, hold that the workman has failed to prove that he was employed with the employer since the year 1988 on wages of Rs. 600/- per month. However, the employer in the written statement has admitted at para 4 that after he took over the charge of M/s. Casa Bela in the year 1992, he employed the workman on wages of Rs. 500/- per month. Therefore, as per the contention of the employer himself, the workman was in the employment from the year 1992. The employer has not denied in the written statement that the workman was no more in his employment from 13-10-93. However, the employer has taken the stand that the workman resigned from the post and an amount of Rs. 600/- was paid to him at his request. Since it is the case of the employer that the services of the workman were not terminated but he resigned from the job, the burden was on the employer to prove the same. However, the employer failed to lead any evidence on this aspect and thus failed to discharge the burden. Once resignation is not proved by the employer, the contention of the workman has to be accepted that his services were terminated by the employer from 13-10-93. Now what is required to be seen is whether the employer violated the provisions of Sec. 25 F of the I. D. Act, 1947.

8. Section 2 (00) of the Industrial Disputes Act, 1947 defines retrenchment as follows:-

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include

- (a) Voluntary retirement of a workman; or
- (b) Retirement of a workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

- (bb) termination of the service of the workman as a result of the non renewal of its contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf concerned therein; or
- (c) termination of the service of a workman on the ground of continued ill-health;

In the present case, admittedly the services of the workman were not terminated as a matter of punishment. The case of the workman also does not fall within the exceptions laid down in section 2(00) of the I. D. Act, 1947. This being the case, the termination of the services of the workman amounts to retrenchment. Section 25F of the I. D. Act, lays down the procedure for retrenchment. It states that the services of the workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of such notice and he has been paid compensation at the rate of 15 days average wages per each year completed year of continuous service, or any part thereof in excess of six months. These conditions are the conditions precedent to retrenchment. Sec. 25B(2) of the I.D. Act, 1947 states that a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in the case of workman employed below ground in a mine and 240 days in any other case. In the present case, the employer himself has admitted that the workman was employed by him from the year 1992 till 13-10-93. The employer took the defence that the workman resigned from the job, which defence he has failed to prove. In the circumstances, admittedly, no notice was given to the workman nor he was paid month's wages in lieu of such notice nor he was paid compensation as required under Sec.25 of the I.D. Act, 1947. The Supreme Court in the case of M/s Avon Services Production Agency Pvt. Ltd. v/s Industrial Tribunal, Hariyanan and others reported in AIR 1979 SC 170 has held that giving of notice and payment of compensation is a condition precedent in the case of retrenchment and failure to comply with the provisions prescribing conditions precedent for valid retrenchment in Sec.25F renders the order of termination invalid and inoperative. Since the workman has worked with the employer for more than 240 days prior to the date of termination of his service, the provision of Section 25F of the I.D. Act, 1947 are attracted to the workman and since the same are not complied with the termination of the services of the workman is illegal and unjustified. In the circumstances, I hold that the workman has succeeded in proving that termination of his services by the employer w.e.f. 13-10-93 is illegal and unjustified as the same is in contravention of the provisions of Sec.25F of the I.D. Act, 1947. The workman has contended that the employer also violated the provisions of Sec.25G and 25H of the I.D. Act, 1947 in terminating his services. Section 25G prescribes the procedure for retrenchment in the sense that in case

of retrenchment, the employer shall retrench the workman who was the last person to be employed in that category and Sec.25H lays down the procedure for re-employment of the retrenched workman. The workman has not led any evidence to prove the violation of Sec. 25G and H of the I.D. Act, 1947. In the circumstances, I hold that the workman has failed to prove that the termination of his services is in contravention of the provisions of Sec. 25G and H of the I.D. Act, 1947. Similarly, there is no evidence on record to show that the termination of the services of the workman is by way of malafides and victimisation. Malafides and victimisation are to be proved by the workman by leading sufficient evidence. In the present case, the workman has not led any evidence at all, and hence I hold that the workman has failed to prove that the termination of his services is by way of malafides and victimisation. I therefore, answer the issue nos. 1 to 4 accordingly.

9. The employer had taken the defence in the written statement that the provisions of the Industrial disputes Act are not applicable and also that the workman had resigned from the service on accepting Rs. 1200/- from the employer. Issue Nos. 5 and 6 were framed accordingly casting the burden on the employer to prove the same. The employer did not participate in the proceedings after the issues were framed. The employer did not lead any evidence inspite of the opportunity given to prove the above issues. In the circumstances, I have no option but to hold that the employer has failed to prove that the provisions of the I.D. Act, 1947 are not applicable to the employer or that the workman resigned from service on accepting Rs. 1200/-. I therefore, answer the issue nos. 5 and 6 in the negative.

10. Issue No. 7: I have held that the termination of the services of the workman w.e.f. 13-10-93 by the employer is illegal and unjustified because the employer did not comply with the provisions of Sec. 25F of the Industrial Disputes Act, 1947. Once the termination is held to be illegal and unjustified, the ordinary rule is that the workman should be reinstated with full back wages, unless there are circumstances which do not warrant reinstatement or full back wages. In the present case, no circumstances are on record which do not warrant reinstatement or full back wages. Therefore, it is just and proper to reinstate the workman in service with full back wages. In the circumstances, I hold that the workman is entitled to reinstatement in service with full back wages and all other consequential benefits.

Hence, I pass the following order:

ORDER

It is hereby held that the action of the management of M/s. Casa Bela, Mapusa, Bardez Goa in terminating the services of the workman Shri Paul Almeida, Barman, with effect from 13-10-93 is illegal and unjustified. The workman Shri Paul Almeida is ordered to be reinstated in service with full back wages and all other consequential benefits.

No order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/PU/Awards/97/2047

The following award dated 15-4-1997 in reference No. IT/63/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 5th May, 1997.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

IT/63/96

Shri Sudhir R. Naik
Rep. by the General Secretary
Gomantak Mazdoor Sangh
Kamakshi Krupa, Khadpabandh
Ponda Goa

— Workman/Party I

v/s

The General Manager
M/s Goa Electricals & Fans Ltd.
Bethora Industrial Estate
Bethora, Ponda Goa

— Employer/Party II

Dated: 15-4-97.

Workman/Party I represented by Adv. Shri P. B. Devani

Employer/Party II represented by Miss C. Rodrigues,
Pers. Officer

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) of Section 10 the Industrial Disputes Act, 1947, the Government of Goa by order dated 1st

November, 1996 bearing No. IRM/CON/Ponda/ / (38)/95/11850 referred the following dispute for adjudication by this Tribunal.

is hereby published as required under the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

" Whether the action of the management of M/s Goa Electricals and Fans Limited, Bethora Industrial Estate, Bethora, Ponda Goa, in terminating the services of Shri Sudhir R. Naik, Trainee w.e.f. 1-10-1992 is legal and justified ?

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 30th June, 1997.

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/63/96 and registered A/D notices were issued to the parties. In pursuance to the said notice, the parties put in their appearance. The party I/Workman (For short "Workman") was represented by Adv. Shri P. B. Devari and the employer/Party II (For short "Employer ") was represented by its Personnel Officer Miss C. Rodrigues.

3. On 18-3-97 when the case was fixed for hearing, the parties submitted that the dispute was already amicably settled and filed the application alongwith the terms of the settlement, praying for Consent Award in terms of the settlement dated 21-2-97 Exb. 5. I have gone through the terms of the settlement dated 21-2-97 which are duly signed by the parties and I am satisfied that they are certainly in the interest of the workman. I, therefore, accept the submissions made by both the parties and pass the Consent Award in terms of the settlement dated 21-2-97 Exb. 5.

ORDER

1. It is agreed between the parties that the employer shall pay to Shri Sudhir R. Naik the Ex-gratia amount of Rs. 23,000/- (Rupees Twenty Three Thousand only) towards his full and final settlement.

2. In view of the above payment paid to Shri Sudhir R. Naik, he has no claim of whatsoever nature against the management and the case IT/63/96 will be withdrawn accordingly.

No order as to costs.

Inform the Government accordingly.

Sd/-
 (AJIT J. AGNI),
 Presiding Officer,
 Industrial Tribunal.

Order

No. CL/Pub-Awards/97/2834

The following award dated 9-6-1997 in reference No. IT/40/85 given by the Industrial Tribunal, Panaji-Goa,

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/40/85

Shri Suryaji Dessai
 C/o Shri N. G. Dessai
 H. No. B-1/2
 Pernem Goa

— Workman/Party I

v/s

The Kadamba Transport
 Corporation Ltd.,
 P. O. 321, Bus Terminus,
 Panaji-Goa.

— Employer/Party II

Workman/Party I - Represented by Adv. Shri P. B. Devari

Employer/Party II - Represented by Adv. Shri C. J. Mane

Dated : 9th June, 1997.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order bearing No. 28/12/85-ILD dated 16th July, 1985 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the employer of M/s Kadamba Transport Corporation Limited, Panaji Goa in terminating the services of their workman Shri Suryaji Desai, Conductor, with effect from 17-1-1983 is legal and justified ?

If not, to what relief the workman is entitled to ?"

2. On receipt of the reference, a case was registered under No. IT/40/85 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party I for short ("Workman ") filed his statement of claim. The fact of the case in brief as pleaded by the workman are that he was employed with the employer/party II (For short "Employer ") as a conductor since 27-7-1981 and while

he was in employment, he received a charge sheet dated 18-10-82 from the employer alleging that when he was checked at the Traffic Office at Panaji, an amount of Rs. 96.55 paise was found in his shirt pocket and an amount of Rs. 15/- was found in his handkerchief and that at the time when this incident took place on 14-10-82, he was on duty on Vengurla-Panaji route on bus GDX-51. That simultaneously the workman was also served with a suspension order dated 18-10-82 placing him under suspension with immediate effect. That the workman replied to the chargesheet by letter dated 25-10-82 denying the allegations made against him. That during the personal hearing, the workman presented the true and correct facts by stating that he had kept the loose change and the notes of small denomination pertaining to ticket cash amounting to Rs. 218/- in the cash bag and the notes of larger denomination amounting to Rs. 111.55 paise in two pockets being an amount of Rs. 96.55 in the shirt pocket and Rs. 15/- in the pant pocket. That out of the amount of Rs. 96.55 found in the shirt pocket Rs. 78/- were that of the Corporation being Rs. 50/- from the sale of Tickets and Rs. 20/- the impress cash collected from a conductor by name Shri Tulsidas Gaonkar and the balance amount 26.55 from the shirt pocket and Rs. 15/- from the pant pocket was his personal cash and that he had entered the amount in the way bill as Rs. 46/- out of which Rs. 5/- were spent by him for his meals and Rs. 41.55 were remaining with him at the time of inspection. That at the time of personal hearing, he was not allowed to read the contents of his statement nor he was given the copy of the same and he was forced to sign the said statement. That when the Union secured the copy of his statement he found that his statement was not recorded properly. That there is no evidence against him to prove that he is guilty of acts of cheating, dishonesty and indiscipline and further standing orders or the service rules of the Corporation do not lay from that the workman should not keep cash in his pocket nor the workman was told or instructed as to where the cash is to be kept nor was told or instructed not to keep the cash in his pockets or not to carry along with him any personal cash. That no proper or valid enquiry was held by the employer and the order of dismissal dated 17-1-1983 by the General Manager is illegal, bad in law, vindictive and perverse. That the punishment of dismissal awarded to the workman is harsh, perverse and without application of mind. The workman therefore, contended that the action of the Party II in dismissing him from service is illegal and invalid and hence he is entitled to be reinstated in service with full back wages.

3. The employer filed the written statement resisting the claim of the workman. The employer stated that the workman was employed as a conductor from 27-7-1981 and as a conductor, he had to issue tickets of appropriate value to every passenger after he enters the bus and account for the money to the employer. That the conductor has to declare his personal cash before he proceeds on duty and surprise checks are carried out to find out whether the conductor discharges his duties properly and the passengers are travelling with proper tickets. The employer stated that on 14-10-82 the Traffic

staff of the employer checked the workman and on checking found an amount of Rs. 96.35 in his shirt pocket and an amount of Rs. 15/- hidden in his handkerchief. That the said amount was in excess of the sale proceeds of tickets and the declared personal cash. The employer stated that a domestic enquiry was held and workman was given all reasonable opportunity to defend himself in the enquiry. The employer denied that the domestic enquiry held against the workman is illegal and invalid. The employer stated that the workman had on earlier occasion also misappropriated the revenue of the employer for which he was fined. The employer stated that the workman was dismissed from service because of dishonesty, misappropriation and loss of confidence. The employer contended that the dismissal of the workman from service is legal and valid and the workman is not entitled to any relief. The workman thereafter, filed a Rejoinder controverting the pleadings made by the employer in the written statement.

4. On the pleadings of the parties, following issues were framed.

1. Whether the employer proves that the enquiry held is fair, proper and with due compliance of the provision of law and principles of natural justice ?

2. Whether the workman proves that the action of the employer in terminating his services w. e.f. 17-1-1983 is illegal and unjustified ?

3. Whether the workman is entitled to any relief ?

4. What Award ?

5. After the issues were framed, the parties led evidence and my learned predecessor passed an Award dated 3-4-1989. In the said Award, it was held that the domestic enquiry held against the workman was not properly conducted. My learned predecessor arrived, at the conclusion that the workman was guilty of the charges, but still it was held that the termination of services of the workman was not proper and justified, and instead of directing reinstatement in service, the employer was directed to pay to the workman compensation of Rs.6,000/- at the rate of 1608- of every year's service. The workman challenged the said Award before the Hon'ble High Court of Judicature at Bombay, Panaji-Bench, Goa, in Petition No. 13 of 1990. The Hon'ble High Court by Judgement dated 10th January, 1997 quashed and set aside the Award dated 3-4-1989 passed by my learned predecessor and remanded the matter back to this Tribunal for disposing the matter afresh. The Hon'ble High Court directed that the evidence led before the enquiry officer by the employer be treated as evidence before this Tribunal. The Hon'ble High Court further directed that employer be permitted to lead further evidence and thereafter permit the workman to examine Shri Tulshidas Gaonkar and any further witnesses in his defence. The Hon'ble High Court held that the findings of my learned predecessor that the domestic enquiry was not fair and proper need not be reopened. This Tribunal was directed

by the Hon'ble High Court to dispose of the matter in the light of the above observations made.

6. The issue No. 1 which touches the fairness of the domestic enquiry stands already decided by my learned predecessor and as per the order of the Hon'ble High Court, the findings cannot be reopened. My findings on the remaining issues are as follows:-

Issue No. 2:- In the negative

Issue No. 3:- In the negative

Issue No. 4:- As per order below

REASONS

7. ISSUE Nos. 2 and 3: Adv. Shri Devari, the learned counsel for the workman submitted that the charge against the workman is that an excess amount of Rs. 96.35 was found in his shirt pocket and an amount of Rs. 15/- was found in his handkerchief. He submitted that the workman had denied that any excess amount was found with him and had given the explanation that the amount of Rs. 26.55 which was found in his shirt pocket and the amount of Rs. 15/- which was found in his pant pocket was infact his personal cash and he had entered the same in the way bill. Adv. Shri Devari submitted that the charge sheet issued to the workman is vague because in the chargesheet, it is mentioned that an excess amount of Rs. 96.35 and Rs. 15/- was found in his shirt pocket and the pant pocket of the workman respectively whereas in the show cause notice it is stated that an amount of Rs. 41.35 was found in excess. He further submitted that there is no evidence before the enquiry officer or before this Tribunal to prove the charges against the workman. He submitted that the employer ought to have produced the way bill in evidence as it was the case of the workman that the amount which was found in excess was entered in the way bill, and the said way bill was in possession of the employer. Adv. Shri Devari contended that the statement of the workman recorded at the time of personal hearing cannot be relied upon as the workman has stated that he did not know what was stated in the said statement and that his signature was taken by force. He also contended that the punishment of dismissal from service awarded to the workman is disproportionate. He submitted that taking into consideration the nature of the charge lesser punishment ought to have been awarded.

Adv. Shri Mane, the learned counsel for the employer on the other hand submitted that the workman in his reply to the charge sheet has admitted that an amount of Rs. 96.35 and Rs. 55/- was found in his shirt pocket and pant pocket at the time when he was checked by the Traffic Inspector on 14-10-82. He submitted that this admission on the part of the workman itself proves the charges against the workman. He submitted that the post of a conductor is that of confidence as the revenue of the Corporation is involved. He contended that the act on the part of the workman showed that he was dishonest and he wanted to misappropriate the amount which in fact belonged to the employer. Adv. Shri Mane submitted

that the employer has proved the charges against the workman leading sufficient evidence before the enquiry officer and this Tribunal. He contended that even if it is held that charges are not proved against the workman, reinstatement should not be granted as the employer has lost confidence in him. In support of his this contention, he relied upon the decision of the Supreme Court in the case of Anilkumar Chakraborty v/s M/s Saraswatipur Tea Co. Ltd reported in 1982 SCC Vol. 2 at page 328.

8. I have carefully considered the arguments advanced by both the learned counsels and I have also gone through the entire records of the case. The charge sheet which is issued to the workman is at Exb. W-1. The same is dated 18th October, 1982. The charge against the workman is that on 14-10-82 he was on duty as Conductor on Vengurla-Panaji route and when he was checked at the Traffic Office, Panaji, an amount of Rs. 96.35 was found in his shirt pocket and an amount of Rs. 15/- was found hidden in his handkerchief. The workman was therefore charged for cheating, dishonesty and indiscipline. It is to be seen whether the employer has succeeded in proving the charges levelled against the workman by leading sufficient evidence. It is an admitted position that domestic enquiry was held against the workman after the charge sheet was issued to him. Now, though it was held that the domestic enquiry was not conducted in a fair and proper manner, as per the direction of the Hon'ble High Court, the evidence led in the domestic enquiry is to be treated as evidence before this Tribunal. Therefore, the evidence led by the parties before the enquiry officer as well as the evidence led by them before this Tribunal is to be considered.

9. The workman has no where disputed that he was on duty as a Conductor on Vengurla-Panaji route on 14-10-1982. He has also not disputed that he was checked at the Traffic Office at Panaji by the checking staff of the employer after the bus returned from Vengurla to Panaji. In the reply dated 25-10-82 filed by the workman to the charge sheet which is produced at Exb W-2, he has admitted that on checking an amount of Rs. 96.35 was found in his shirt pocket and an amount of Rs. 15/- was found in his pant pocket. He however denied that Rs. 15/- were hidden in his handkerchief. This denial according to me is immaterial. What is relevant is whether this amount of Rs. 15/- was found in his pant pocket or not to prove the charge of cheating, dishonesty and indiscipline, and the workman has admitted that the said amount was found in his pant pocket. The defence which is set up by the workman is that out of the amount of Rs. 96.35 found from his shirt pocket, Rs. 50/- were from the sale of the tickets and Rs. 20/- was the impres cash which he had collected from another conductor by name Shri Tulshidas Gaonkar, and this amount belonged to the employer Corporation. The balance amount of Rs. 26.55 and the amount of Rs. 15/- which was found in his pocket he claimed to be his personal cash. He has further taken the defence that he had entered the amount of Rs. 46/- in the way bill as his personal cash and out of this amount, he had spent Rs. 15/- on his meal. The workman claimed that the total balance amount of Rs. 41.35 which was thus

found with him was his personal cash. This defence has been set up by the workman in para 4 of his claim statement as well as in the evidence led by him before this Tribunal. The employer has produced the rules for the drivers and conductors at Exb. E-1. Rule 13 of the said rules states that a driver and a conductor is allowed to carry Rs. 25/- as his personal cash when he goes on route out of Goa and he has to enter the amount of cash and sign. Though the workman in his cross examination has stated that the copy of the said rules was not supplied to him, still from the defence which he has taken and from his deposition it is evident that he was aware that he had to make note of his personal cash and sign the same whenever he went on a route. The workman in his statement of claim as well as in his deposition has stated that at the time when he left for Vengurla on 14-10-82 at about 7.20 a. m. he had with him his personal cash of Rs. 46/- and he had noted this amount on the way bill which was signed by the Controller Mr. Phadte. This shows that the workman was aware of the procedure for carrying personal cash with him. It was the case of the workman that he had entered the amount of his personal cash in the way bill as required by him, he ought to have proved the same by relying upon the same way bill and asking the employer to produce the same in evidence. Once the workman admitted that a certain amount of cash was found on his person which according to him was his personal cash, the burden is shifted on him to prove the same. The workman ought to have called upon the employer to produce the way bill to prove his contention and if the employer had failed to produce the same, perhaps adverse inference could have been drawn against the employer. Neither in the enquiry nor before this Tribunal the workman sought the production of the way bill. The workman has not led any evidence to prove that the amount of cash found with him and which is admitted by him was his personal cash. This was very much required in view of the defence set up by the workman. Therefore in the absence of evidence it is difficult to accept the contention of the workman that the amount of Rs. 46/- which is admitted by him was his personal cash. After the matter was remanded to this Tribunal to decide the matter afresh, opportunity was given to the workman to lead evidence in his defence. However, the workman did not avail of this opportunity and consequently, neither Shri Tulshidas Gaonkar nor any other witness was examined by him. After the matter was remanded to this Tribunal by the High Court, the employer has examined two witnesses namely Shri Vinayak Velingkar and Shri Parshuram Karpe. These two witnesses are examined to prove that personal search of the workman was taken on 14-10-82 in their presence and an amount of Rs. 15/- was recovered from the pant pocket of the workman which was kept in the handkerchief. In the cross examination of the said witnesses the workman has suggested that no personal search was taken on 14-10-82 and an amount of Rs. 15/- were not recovered from the handkerchief. These suggestions are partly contradictory to the case set up by

the workman in his statement of claim. Though he has denied that the amount of Rs. 15/- was not recovered from the handkerchief, he has admitted that his personal search was taken on 14-10-82 and an amount of Rs. 15/- was recovered from his pant pocket. As I have said earlier, the employer had led evidence before the enquiry officer which is on record. In the said enquiry, the statement of the workman recorded on 14-10-82 was produced. The said statement is recorded in English. The workman has never disputed this statement. In the said statement the workman has admitted that on search, Rs. 96.35 were found in his shirt pocket and Rs. 15/- were found in the handkerchief which was kept in the pant pocket. Besides, his statement was also recorded on 9-11-82 by the General Manager. In the said statement also, he has admitted that Rs. 15/- were found in his handkerchief. Subsequently, the workman took the stand that he did not know what was stated in the said statement and that his signature was taken by force. This contention of the workman is hard to be accepted. The workman in his cross examination has admitted that he has studied upon 10th Std, and he knows English and Marathi and he has signed in English. It is rather difficult to believe that a person would sign a statement without reading it. The question perhaps would have been different if the statement was recorded in the language not known to the workman. Besides, the enquiry officer had also put certain questions to the workman and he had answered those questions. In the said statement recorded in question and answer form, the workman has admitted that he had kept the amount of Rs. 15/- in the handkerchief. Therefore, there is sufficient evidence to support the contention of the employer that the amount of Rs. 15/- was recovered from the pant pocket of the workman which was kept in the handkerchief. One fails to understand as to why the workman should have kept the amount in handkerchief if the same belonged to him? Even if it is accepted for a moment that the amount of Rs. 15/- was not kept in the handkerchief but it was recovered from his pant pocket, still the question is whether the workman has succeeded in proving that it was his personal cash? In my view the workman has failed to prove the same. This is because according to him he was carrying total amount of Rs. 46/- as his personal cash which included this amount of Rs. 15/- and he had entered this amount in the way bill. If this was so, the workman ought to have asked the employer to produce the way bill. However, the workman did not do so and consequently, there is no evidence to support the contention of the workman that he had entered the amount of Rs. 46/- in the way bill being his personal cash. Adv. Shri Devari, the learned counsel for the workman has sought to argue that the charge sheet is vague because it is mentioned in the charge sheet that an excess amount of Rs. 96.35 and Rs. 15/- was found whereas in the showcause notice, it is stated that an amount of Rs. 41.35 was found in excess. I do not agree with this contention of Adv. Shri Devari. Charge sheet was issued to the workman after the personal search of the workman was taken and the amount was found. The show cause notice was issued to the

workman after the completion of the enquiry. Therefore, after considering the evidence on record, and after considering the explanation given by the workman, it was found that actual amount in excess was Rs. 41.35 and hence it was stated as in the show cause notice. This is evident from the contents of the show cause itself. I am therefore, of the view that there is no substance in the contention of Adv. Shri Devari that the chargesheet is vague.

10. From the evidence which is discussed above, I am of the view that the employer has succeeded in proving that on 14-10-82 when the workman was personally checked after he returned to Panaji from Vengurla trip, an amount of Rs. 96.35 was found in his shirt pocket an amount of Rs. 15/- was found in his pant pocket, kept in a handkerchief. From the evidence on record and the explanation which the workman gave in his statement of claim, it is established that Rs. 41.55 was the excess amount which was found with the workman, and the workman has failed to prove that this amount was his personal cash which he carried with him. Once the workman has failed to prove that the amount found with him was his personal cash, the only reasonable inference which can be drawn in the absence of any other evidence is that, the workman had collected the fare from the passengers and had not issued tickets to them. The intention behind this cannot be any other than to make personal gain and to deprive the employer of its legitimate revenue. This act on the part of the workman amounts to dishonesty, cheating and indiscipline which is a grave misconduct. I therefore hold that the employer has succeeded in proving the charges levelled against the workman in the charge sheet dated 18-10-82 Exb. w-1, are proved.

11. Now the next question for consideration is whether the action of the employer in terminating the services of the workman is legal and justified after having found the workman guilty of the charges levelled against him. To arrive at this finding, what is relevant is the nature of the misconduct committed and the past conduct of the workman. In the present case, the workman working as a Conductor. Therefore, being a Conductor he was responsible for the collection of the revenue for the employer on which it could carry on its business. It has been established that an excess amount of Rs. 41.35 was found with the conductor after he returned to Panaji from Vengurla trip. The workman has failed to prove that this amount of Rs. 41.35 was his personal cash. The workman had acted dishonestly and his intention was to deprive the employer of its legitimate revenue. This is serious act of misconduct. The employer has brought on record the past conduct of the workman. Shri Agnelo Gracias, the Traffic Inspector, in his deposition has stated that on earlier two occasions he had checked the workman and on both the occasions, excess amount was found with him, and he had made the report to the superiors. He has stated that on both the occasions some fine was imposed and warnings were given to the workman. This statement of Shri Gracias was neither challenged nor denied in his cross examination. The above statement of Shri Gracias

shows that the past record of the workman was not good and he was in the habits of indulging in similar acts, which was detrimental to the interest of the employer. Adv. Shri Mane, learned counsel for the employer, has relied upon the decision of the Supreme Court in the case of Anil Kumar Chakraborty (Supra) on the point of relief to be granted. I have gone through the said decision. In the said case the Supreme Court has held that if the employee was holding the post of confidence and trust and he is dismissed from service by the management for loss of confidence in him, even if the dismissal is wrongful, normally, reinstatement should not be granted and payment of compensation in lieu of reinstatement would be the adequate relief. In the present case, being the conductor the workman was also holding the post of trust and confidence. In the case of Pandurang Kashinath Wani v/s The Divisional Controller, M.S.R.T.C., Dhule, reported in 1995 I CLR 1052, the Bombay High Court held that the punishment of dismissal from service awarded to the conductor was justified because the conductor was found guilty of issuing used tickets, he had also collected fare from the passengers but had not issued tickets, excess amount was found with him. In the case of Gujrat State Road Transport Corporation V/s Kachraji Notiji Parwar, reported in 1983 CLR the bus conductor was found guilty of the charges amongst others such as of collecting fare from the passengers but not issuing tickets to them also not issuing tickets at all to some passengers. The Labour Court set aside the dismissal order and directed reinstatement without back wages. However, the Gujrat High Court set aside the order of the Labour Court on the ground that the Conductor had committed grave misconduct and also his past conduct was not good. In the case of Devakinandan Tiwari V/s State Industrial Court, M. P. reported in 1999 II CLR 721, the conductor was dismissed from service by the Transport Corporation because when the bus was checked about 20 passengers were found travelling without tickets. The Labour Court awarded lesser punishment to the conductor and ordered reinstatement without back wages. The Industrial Tribunal set aside the order of the Labour Court and restored the order of dismissal. The Madhya Pradesh High Court dismissed the Petition filed by the conductor holding that the punishment of dismissal was proper and justified. The High Court held that the conductor is expected to be vigilant enough and see that no passenger travels without ticket, and if the conductor is unable to discharge this sacred trust reposed in him by the employer, he does not deserve to be retained as a Conductor. In another case i.e. in the case of Bhagirathmal Raiwal v/s Judge, Industrial Tribunal, Jaipur, reported in 1995 I CLR 925, the Conductor was dismissed from service for carrying passengers without tickets after collecting fare from them. The Tribunal held that the punishment of dismissal was proper. The order was challenged before the Rajasthan High Court by the Conductor. The High Court held that the order of dismissal was proper and justified on the ground that the misconduct involving cheating and misappropriation does not deserve any leniency. The principles laid down by the Bombay High Court and the other High Courts in the above referred cases squarely apply to the present case. The above

referred cases were the cases where the conductor had committed misconduct of the like the one committed by the workman in the present case. The High Court held that the misconduct was grave and therefore the punishment of dismissal from service was proper and justified. The same principles are applicable to the facts of the present case. In the circumstances I hold that the action of the employer in terminating the services of the workman w.e.f. 17-1-1983 is legal and justified, and no interference in punishment is called for. Hence, I answer the issue accordingly and pass the following order.

ORDER

It is hereby held that the action of the employer M/s Kadamba Transport Corporation Limited, Panaji Goa, in terminating the services of their workman Shri Suryaji Dessai, w.e.f. 17-1-1983 is legal and justified. It is hereby further held that the workman Shri Suryaji Dessai is not entitled to any relief.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/pub-Awards/97/2799

The following Award dated 5-6-1997 in Reference No. IT/71/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).
Panaji, 25th June, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding
Officer)

Ref. No. IT/71/96

Shri S. V. Sabnis,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
Ponda Goa.

— Workman/Party I

v/s

M/s Karnataka Cargo Transport
Pvt. Ltd.,
Navelim, Curti,
Ponda-Goa.

— Employer/Party II

Workman/Party I represented by Adv. Shri P. B. Devari
Employer/Party II-Ex-parte

Dated: 5-6-97.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order No. IRM/CON/Ponda/(82)/96/12028 dated 7th November, 1996 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Karnataka Cargo Transport (P) Limited, Navelim, Ponda Goa, in terminating the services of Shri S. V. Sabnis, Clerk, with effect from 10-1-1996 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/71/96 and registered A/D notice was issued to the parties. The workman/Party I (For short "workman") was duly served with the notice and was represented by Adv. Shri P. B. Devari. However, the registered A/D notice issued to the employer/Party II (For short "Employer") was returned unserved with postal endorsement "Unclaimed". Adv. Shri Devari filed Statement of Claim and also undertook to furnish proper address of the employer. Subsequently, another registered A/D notice was issued to the employer on the address furnished by the workman and the employer was duly served with the said notice. In spite of several opportunities given, the employer neither appeared nor filed any Written Statement and hence the case was proceeded ex-parte against the employer on 20-3-97 and subsequently, the evidence of the workman was recorded.

3. In the Statement of Claim filed by the workman, he contended that he was employed with the employer as a clerk w.e.f. 17-8-83. The workman stated that the employer is engaged in the business of contract transport at M.R.F. Factory, Goa. The workman contended that the employer terminated his services w.e.f. 10-1-96 and at the time of termination of his services, his legal dues were not paid nor any inquiry was conducted. He contended that the termination of his services by the employer is illegal and unjustified and he is unemployed since the date of termination of his services. The workman therefore, claimed reinstatement with full back wages.

4. In support of his Claim Statement, the workman examined himself. In his deposition, the workman stated that he was employed as a clerk with the employer since 17-8-83 and was posted at the premises of M.R.F. at Usgao, Goa. He stated that his duty was to unload the goods transported by the employer who was in transport business. The workman produced a letter dated 17-8-83 Exb. W-2 written by the employer to the M.R.F., wherein it is stated that the employer had authorised the workman

to deliver/lift the goods and also to sign all the necessary documents on behalf of the employer. This letter itself is enough to prove the contention of the workman that he was employed with the employer since 17-8-83 and was posted at M.R.F. premises at Usgao. The workman in his deposition further stated that the employer had not paid him his wages for the month of December, 1995 and when he demanded his wages from the manager, he was told not to report for work from 10-1-96 as his services were not required. The workman further stated that he thereafter raised an Industrial Dispute with the Assistant Labour Commissioner and the proceedings resulted in failure because the employer did not participate and consequently, a failure report was submitted to the Government by the Asst. Labour Commissioner. The failure report has been produced by the workman which is at Exb. W-1. The workman also further stated that he was neither paid compensation nor was he paid his legal dues. All the statements made by the workman in his deposition have gone unchallenged and I have no reasons to disbelieve the statements made by the workman, which are made on oath. There is no contrary evidence to the one led by the workman.

5. From the evidence which has been discussed by me above and from the documents produced by the workman at Exb. W-2 and W-1, namely the letter written by the employer to the M.R.F. and the failure report submitted by the Asst. Labour Commissioner respectively, I am of the view that the workman has succeeded in proving that he was in employment of the employer from 17-8-83 as a clerk and his services were terminated by the employer w.e.f. 10-1-96 illegally and without any justification. There is no evidence on record to show that the workman was paid compensation as required under the law when his services were terminated as the workman was in service for more than 240 days prior to the date of termination of his services and therefore, the termination of his services is in violation of Sec. 25-F of the I. D. Act, 1947.

6. In the circumstances, I hold that the workman has succeeded in proving that the action of the employer in terminating his services w.e.f. 10-1-1996 is illegal and unjustified. Since the termination of the services of the workman has been held by me as illegal and unjustified, as per the normal rule, the workman is entitled to reinstatement with full back wages, unless there is some evidence on record to show that the workman is not entitled to reinstatement or full back wages. In the present case, the employer did not participate in the proceedings and allowed the case to proceed ex-parte against it. Therefore, there is no evidence on record which would justify not granting relief of reinstatement with full back wages of the workman. It is the case of the workman that since the date of termination of his services, he is unemployed and there is no contrary evidence to this statement of the workman. In the circumstances I hold that the workman is entitled to reinstatement with full back wages and all other consequential benefits.

Hence, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s Karnataka Cargo Transport (P) Limited, Navelim Curti, Ponda Goa in terminating the services of the workman Shri S. V. Sabnis, Clerk, w.e.f. 10-1-96 is illegal and unjustified. The workman Shri S. V. Sabnis is ordered to be reinstated in service with full back wages and all other consequential benefits.

There shall be no order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/97/1552

The following Award dated 10-3-1997 in Reference No. IT/9/85 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 18th March, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding
Officer)

Ref. No. IT/9/85

Shri Vishram Tuyenkar
Near Karekar Building, 1st Floor,
Near Laxmi Narayan Temple
Mapusa, Bardez Goa — Workman/Party I

v/s

M/s Maina Ore Transport
Margao, Salcete Goa — Employer/Party II

Workman/Party I represented by Shri Subhash Naik

Employer/Party II represented by Adv. B. G. Kamat

Dated: 10-3-1997.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Lieutenant Governor of Goa, Daman and Diu by order dated 19th April, 1985 bearing order No. 28/45/84-ILD referred the following dispute for adjudication.

"Whether the action of the employer, M/s Maina Ore Transport Limited, Margao, Salcete Goa in terminating the services of Shri Vishram Tuyenkar, machanic, w. e.f. 15-2-1984 is legal and justified?

If not to what relief the workman is entitled to?"

2. On receipt of the reference, a case was registered under No. IT/985 and registered AD notices were issued to the parties. Since the workman, Shri Vishram Tuyenkar had already expired at the time when the reference was made by the Government, his legal representatives filed an application for bringing them on record as Party I in place of the deceased workman Shri Vishram Tuyenkar which was allowed. The party I thereafter filed the Statement of Claim at Exb. 14. The facts of the case in brief as pleaded by the Party I are that the workman Shri Vishram Tuyenkar was employed with the Party II as a mechanic. That the services of the workman were terminated consequent to the departmental enquiry held by the Party II of which, no legal notice was given to the workman. That during the pendency of the enquiry proceeding, the workman was under mental disability and the Party II being aware of this fact could not have held the departmental enquiry against him and punish him for alleged misconduct. That the workman was charge sheeted for absentism which could not be treated as misconduct even if it is proved that he was absent from duties as he was under mental disability during the said period. The Party I contended that for the above reasons, the Party II had no authority to punish the workman for alleged misconduct. The Party I further contended the the punishment awarded to the workman is too harsh and severe. The Party I contended that since the services of the workman could not have been terminated for alleged misconduct, the Party I, being the legal representatives of the workman, are entitled to full back wages payable to the workman from the date of the termination of his services till the date of his reinstatement and all other terminal benefits including gratuity, encashment of leave and other privileges. The Party I also contended that they are entitled to receive the back wages of the workman from the date the charge sheet was issued to him till the date of his termination.

3. The Party II filed Written Statement at Exb. 15. The Party II stated that the workman died on 12-4-85 i.e. before the commencement of proceedings before this Hon'ble court. Therefore, the reference is void and without jurisdiction. The Party II stated that no proceedings were pending before this Court on the date when the workman died and therefore, there cannot be substitution of the heirs of the deceased workman for proceeding with the reference. The party II stated that the workman was in mental disability for a long time and denied that the workman was charge sheeted for absentism or that any enquiry was held into the alleged misconduct or that the

services of the workman were terminated for alleged misconduct. The Party II stated that the workman started remaining absent unauthorisedly from 1980-81 on numerous occasions and whenever he attended the work, his behaviour with the co-workers was abnormal and there were assaults and quarrels arising out of such behaviour of the workman. The Party II further stated that the workman continuously remained absent from 12-11-83 and that the Party II came to know that the workman was admitted in the Mental Hospital, an inquiry was made with the Medical Superintendent of the Mental Hospital, Panaji about the state of health of the workman and the said Superintendent by letter dated 25-1-84 informed to the Party II that the workman was suffering from "Schizophrenia". The Party II stated that since it came to the conclusion that the workman was suffering from mental disorder, incapacitating him to attend to his duties efficiently and in normal manner, the services of the workman was terminated from 15-2-84 on account of his continued illness by way of termination simpliciter on payment of notice pay, gratuity, wages for unavailed leave and upto date wages till 15-2-1984. The Party II contended that the services of the workman was terminated on the ground of continued illness and not for misconduct as alleged. The Party II further thereafter contended that the termination of the services of the wokman is legal and justified.

4. The Party I, thereafter, filed Rejoinder at Exb. 16. On the pleadings of the parties, following issues were framed at Exb.17.

1. Whether the Government reference dated 19-4-1985 is void and without jurisdiction in view of the death of the workman on 12-4-1985.

2. If the Government reference is held tenable, whether the heirs of the deceased workman can be substituted at all in view of section 10(8) read with section 20(3) of I.D. Act, 1947 ?

3. Whether any departmental enquiry was held against the workman Shri Vishram Tuyenkar leading to his dismissal on account of absentism at all as alleged by the heirs of the workman?

4. Whether Party II/Company proves that the workman started remaining absent from 12-11-1983 because of his admission into lunatic assylum as alleged in para 11 of Written Statement ?

5. Whether the Party II further proves that the services of the workman were terminated on valid grounds of continued absence on account of illness and that all dues upto 15-2-1984 were paid to the workman as alleged in para 12 of Written Statement?

6. What relief, if any, are the heirs of the deceased workman entitled to?

5. The issue nos. 1 and 2 were treated as preliminary issues since they were pertaining to the jurisdiction of this Tribunal to proceed further with the reference. This Tribunal by Order dated 4-6-90 held that the reference made by the Government is tenable and the heirs of the deceased workman can be substituted in his place and

answered the issue No. 1 and 2 accordingly. Thereafter, the evidence of the Party I was recorded on the other issues. The Party I examined only one witness i. e. Shri Anai Tuyenkar. The Party II did not lead any evidence in the matter. When the case was fixed for Final Arguments, the Party I filed an application dated 8-11-1996 stating that they are not interested in proceeding further with the dispute and it may be treated as dispute between the parties as settled. The Party II did not object to the application filed by the Party I dated 8-11-96 Exb. 20. Since the Party I themselves have stated that they are not interested in proceeding further with the matter and the dispute between them and the Party II be treated as settled, the dispute does not exist and consequently, the reference does not survive. In the circumstances, I pass the following order:

ORDER

It is hereby held that the reference does not survive as the dispute does not exist.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal,

Order

No. CL/Pub-Award/97/1557

The following award dated 18-3-1997 in reference No. IT/42/90 given by the Industrial Tribunal, Panaji- Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 25th March, 1997.

**IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI**

**(Before Shri Ajit J. Agni, Hon'ble Presiding
Officer)**

Ref. No. IT/42/90

Workman

Rep. by Goa Trade & Commercial
Workers Union
Velho Building, 2nd Floor
Panaji Goa.

— Workmen/Party I

v/s

M/s Jose Francis Dos Santos
Vidhyanagar, Aquem
Margao.

—Employer/Party II

Party I represented by Shri Raju Mangueshkar

Party II represented by Adv. Shri G.D. Kirtani

Dated: 17-3-1997.

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 28-9-1990 bearing No. 28/47/90-LAB referred the following dispute for adjudication by this Tribunal.

" Whether the following demands raised by the Goa Trade and Commercial Workers Union before the management of M/s Jose Francisco Dos Santos, Margao, are justified?

If not, to what relief the workmen are entitled?"

2. The schedule is appended with as many as 12 demands for

- (1) Gradation/Pay-scales/Flat-rise
- (2) Fixed Dearness Allowance
- (3) Variable Dearness Allowance
- (4) House Rent Allowance
- (5) Travelling Allowance
- (6) Uniforms and Washing Allowance
- (7) Tea and Snacks
- (8) Leave Facilities
- (9) Pay Slips

3. On receipt of the reference, a case was registered under No. IT/42/90 and registered A/D notice was issued to both the Parties. The Party I (For short 'Union') filed its Statement of claim which is at Exb. 5. In the said statement of Claim, the union raised various contention justifying the demands made by the Union against the Party II (For short 'Employer'). The Employer, thereafter, filed its Written Statement which is at Exb. 7. In the said written Statement, the employer disputed the various contentions made by the union in their Statement of Claim. The employer denied that the workman were entitled to any reliefs as claimed and submitted that the demands made by the union were unreasonable and were not within the frame-work of law. The Union thereafter, filed Rejoinder which is at Exb. 8. On the pleadings of the parties, issues were framed at Exb. 9 and the case was posted for the evidence of the parties.

4. On 10-10-1996, when the case was fixed for recording the evidence of the Union, an application dated 10-10-96 was filed by the President of the Union, stating that the workmen were not interested in pursuing with the demands made by them through the Union and therefore, the Union was withdrawing the demands raised by them against the employer and which was the subject matter of the reference. The employer gave No Objection for the withdrawal of the demands by the union.

5. That since the Union had raised the demands on behalf of the workmen and since the Union has withdrawn

the said demands on the ground that the workmen are not interested in pursuing with the said demands, the dispute does not exist and consequently, the reference does not survive. In the circumstances, I pass the following order:-

ORDER

It is hereby held that the reference does not survive since the dispute does not exist in view of the withdrawal of the demands by the union, namely the Goa Trade and Commercial Workers Union, Panaji Goa

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/97/3104

The following Award dated 26-7-97 in reference No. IT/3/97 given by the Industrial Tribunal, Panaji- Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 14th July, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI GOA

(Before Shri Ajit J. Agni, Hon'ble Presiding
Officer)

Ref. No. IT/3/97

Workmen,
Rep. by the General Secretary,
All Goa General Employees Union,
Vasco- da - Gama. — Workman/Party I

V/s

M/s. Mahalsa Chemical,
Plot No. 53 to 55,
Bethora Industrial Estate,
Ponda - Goa. — Employer/ Party II

Workmen/Party I represented by Adv. Shri T. Pereira
Employer/Party II represented by Adv. Shri A. V. Nigalye

Dated: 26th June, 1997.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order No. IRM/CON/PONDA/(24)/96/308 dated 16th January, 1997 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Mahalsa Chemicals Bethora, Ponda Goa, in terminating the services of their workman Shri Damodar Chilputkar, with effect from 18-6-1994 is legal and justified?"

If not, to what relief the workman is entitled?"

2. On receipt of the reference, the case was registered under No. IT/3/97 and Registered A/D notice was issued to the parties. On 19-3-97 when the case was fixed for hearing, the Workman/Party I (For short "Workman") filed an application alongwith the Vakalatnama of Adv. Shri T. Pereira praying that he may be allowed to be represented by Adv. Shri T. Pereira. The application filed by the workman was granted and the case was adjourned to 11-4-1997 for filing the statement of Claim by the workman. On the said date, the case was adjourned at the request of Adv. Shri T. Pereira and the case was fixed on 25-4-97 for filing of the statement of claim on behalf of the workman. On the said date, neither the workman nor Adv. Shri Pereira appeared and hence last opportunity was given to the workman to file the statement of claim on 13-6-97. On the said date again, neither the workman nor his advocate appeared and consequently, no statement of claim was filed on behalf of the workman. Since sufficient opportunity was given to the workman to file the statement of claim and he did not take avail of this opportunity, no further opportunity was given to the workman to file his statement of claim as it was evident that he was not interested in the matter. Adv. Shri Nigalye, representing the Employer/Party II (For short "Employer") stated that he did not wish to file any statement of claim on behalf of the employer. He submitted that since the burden was on the workman to prove that the termination of his services was illegal and unjustified, he ought to have filed the statement of claim and since the workman had failed to file the statement of claim in support of his contention, it is to be held that the termination of the services of the workman by the employer w.e.f. 18-6-94 as legal and justified.

3. The reference of the dispute was made by the Government of Goa at the instance of the workman since he challenged the action of the employer in terminating his services w.e.f. 18-6-94 and as such, he raised an industrial dispute. The Bombay High Court, Panaji Bench in the case of V.N.S. Engineering Services v/s Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol. 71, 393 has held that there is nothing in the Industrial Disputes Act, 1947 that indicates a departure

from the general rule that he who approaches a Court for a relief should prove his case i.e. the obligation to lead evidence to establish an allegation made by a party is on the party making the allegation, the test being, he who does not lead evidence must fail. The High Court further held that the provision of rule 10-B of the Industrial Disputes Act (Central Rules 1947) which requires the party raising the dispute to file a statement of demands relating only to the issue in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the Opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove the contention raised by him and an Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. The Allahabad High Court in the case of V. K. Raj Industries V/s Labour Court (I) and other reported in 1981 (29) FLR 194, has held that the proceedings before the Industrial Tribunal are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The Allahabad High Court has further held that if the workman fails to appear or to file the written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

4. In the present case, since the dispute was raised by the workman and the reference was made by the Government at his instance, the burden was on the workman to prove that the action of the employer in terminating the services w.e.f. 18-6-94 was not proper and justified. Further, the workman inspite of having being given several opportunities to appear in the matter and file his statement of claim, did not do so. There is no material before me to hold that the action of the employer in terminating the services of the workman is not legal and justified. In the absence of any evidence it cannot be held that the action of the employer in terminating the services of the workman w.e.f. 18-6-94 is not legal and justified. In the circumstances, I hold that the workman has failed to prove that the termination of his services by the employer w.e.f. 18-6-94 is illegal and unjustified. Hence I pass the following order.

ORDER

It is hereby held that the action of the employer M/s. Mahalsa Chemicals, Bethora, Ponda Goa in terminating the services of the workman Shri Damodar Chilputkar w.e.f. 18-6-94 is legal and justified.

No order as to cost.

Inform the Government accordingly.

Sd/-

(AJIT J. AGNI),

Presiding Officer,

Industrial Tribunal,

Order

No.CL/Pub-Awards/97/3230

The following Awards dated 3-7-1997 in Reference No. IT/90/94, IT/101/94, IT/12/95 (Common Award) and given by the Industrial, Tribunal Panaji-Goa, are hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 22nd July, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding
Officer)

IT/90/94

Workmen,
Rep. by the President,
Goa Trade & Commercial
Workers Union
Velho Building, 2nd Floor,
Panaji-Goa.

— Workmen/Party I

V/s

M/s Mandovi Hotels (P) Ltd.,
Owners of A 'Pastelaria',
Mandovi Bakers & Confectioners,
Panaji-Goa.

— Employer/Party II

IT/101/94

Workmen, rep. by the President,
Goa Trade and Commercial
Workers Union,
Velho Building, 2nd Floor,
Panaji-Goa.

— Workmen/Party I

V/s

M/s Mandovi Hotels (P) Ltd.;
Owners of A 'Pastelaria',
Mandovi Bakers and
Confectioners,
Panaji-Goa.

— Employer/Party II

IT/12/95

Workmen,
Rep. by the President,
Goa Trade and Commercial
Workers Union,
Velho Building, 2nd Floor,
Panaji-Goa.

— Workmen/Party I

V/s

M/s Mandovi Hotels (P) Ltd.,
Owners of A 'Pastelaria',
Mandovi Bakers and Confectioners,
Panaji-Goa.

— Employer/Party II

Workmen/Party I represented by Shri Suḥas Naik.
Employer/Party II represented by Adv. Shri B. G. Kamat.

Dated: 3-7-1997.

AWARD

These are the reference made by the Govt. of Goa in exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947). The above reference can be conveniently disposed of by a common award as the parties to the dispute are the same and the issues involved in the said references have been settled between the parties by one common settlement.

2. The reference registered under No. IT/90/94 is made by the Government of Goa by order No.28/26/94-LAB dated 12-8-94 and the dispute referred for adjudication to this Tribunal is as follows:-

"Whether the action of the management of M/s A 'Pastelaria', The Mandovi Bakers and Confectioners, Panaji Goa, in terminating the services of the following workmen w.e.f. 30-1-94 is legal and justified?

1. Anand Kuncollikar	Skilled Baker
2. Peter Fernandes	Semi-skilled Baker
3. Mahadeo Rosario	Helper/Cleaner
4. Gabriel Baptista	Sales Assistant cum Cashier
5. Francis D'Souza	Accounts Clerk
6. Diogo Mendonca	Semi-skilled Baker
7. Anthony Almeida	Sales Assistant cum Cashier
8. Francis Lobo	Accounts Clerk
9. George Almeida	Skilled Baker
10. Cajetan Mendez	Sales Assistant cum Cashier
11. Daril Rodrigues	Sales Assistant cum Cashier
12. Ramesh Bomkar	Helper/Cleaner
13. Vilas K. Sawant	Helper/Cleaner
14. Shyam Gauns	Helper/Cleaner
15. Sarita Volvoikar	Sales Assistant cum Cashier
16. Naguesh Gauns	Helper/Cleaner
17. Ghaneshyam Kundaikar	Helper/Cleaner
18. Vishnu Gauns	Helper/Cleaner
19. Ghaneshyam Kuncollikar	Helper/Cleaner
20. Anant Martis	Helper/Cleaner
21. Narcinv Kuncollikar	Semi-Skilled Baker
22. Narendra Kuncollikar	Helper/Cleaner
23. Narayan Vernekar	Helper/Cleaner
24. Kashinath Kuncollikar	Semi-Skilled Baker
25. Chandrakant Salekar	Semi-Skilled Baker
26. Sebastiao Vales	Skilled Baker
27. Lawrence D'Souza	Skilled Baker
28. Pramod Bhosle	Supervisor cum storekeeper

29. Richard Andrade	Semi-skilled Baker
30. Bonifacio Rodrigues	Semi skilled Baker
31. Ramesh Gauns	Helper/Cleaner
32. Shivappa Pujari	Helper/Cleaner
33. Jacinto Dias	Helper/Cleaner
34. Govind Bhandare	Helper/Cleaner

If not, to what relief the workmen are entitled ?"

3. The reference registered under No. IT/101/94 is made by the Government of Goa by order No. 28/46/94-LAB dated 11-10-94 and the dispute referred for adjudication to this Tribunal is as follows:

"Whether the demand of the Goa Trade Commercial Workers Union on behalf of the workmen employed in M/s A 'Pastelaria', The Mandovi Bakers and Confectioners, Panaji Goa for 20% Bonus for the accounting year 1992-93 is legal and Justified?

If not, to what relief the workmen are entitled?"

4. The reference registered under No. IT/12/95 is made by the Government of Goa by order No.28/54/94-LAB dated 18-1-95 and the dispute referred for adjudication to this Tribunal is as follows:

"Whether the demands shown below and served on the management of M/s A 'Pastelaria', The Mandovi Bakers & Confectioners, Panaji-Goa by the Goa Trade & Commercial Workers Union on behalf of their workmen are legal and justified ?

DEMANDS

DEMAND No. 1: REVISION IN BASIC SALARY

The Basic Pay should be suitably revised after mutual discussions. Our demands is that the present Basic Pay scales should be increased by 70%.

DEMAND No. 2: FIXED DEARNESS ALLOWANCE (F.D. A.)

Fixed Dearness Allowance should be revised and increased to Rs. 210/- per month.

DEMAND No. 3: VARIABLE DEARNESS ALLOWANCE (V.D. A.)

The VDA be revised. Our demand is that existing VDA of 90 paise per point rise be revised to Rs. 1.65 per point rise. The VDA be paid every quarter. The actual increase in points of VDA be displayed on the staff notice board before the payment is made to the workers.

DEMAND No.4: HOUSE RENT ALLOWANCE (HRA)

The workers be paid House Rent Allowance of Rs. 300/- per month.

DEMAND No. 5: TRAVELLING ALLOWANCE (TA)

The existing Travelling Allowance paid to the workers be revised by two times the present amount of Travelling Allowance.

DEMAND No. 6: LEAVE FACILITIES:

- (a) *Privilege Leave*: The privilege leave be increased to 30 days in a Calendar year with accumulation facility of 4 years i.e. 120 days. The workers should be allowed to enjoy leave for 6 times in a Calendar year. Leave exceeding 120 days be allowed to be encashed by workers.
- (b) *Sick Leave*: Sick leave be increased to 15 days in a Calendar year with accumulation facility of 4 years i.e. 60 days. Sick leave of upto 3 days be allowed to be availed without Doctor's certificate.
- (c) *Casual Leave*: Casual leave be increased to 12 days in a Calendar year. Workers should be allowed to avail casual leave to a maximum extent of 4 days at a stretch.

DEMAND No. 7: HOLIDAYS:

Holidays in a Calendar year should be revised from existing 7 days in a year to 13 days in a year.

DEMAND No. 8: Provision of Food and Snacks:

- (a) Food (Lunch /Dinner) should be provided to all the staff on duty daily.
- (b) Snacks of one butter bun/two patties in morning during tea time and two cup cakes each during the evening tea time should be provided to each worker.

DEMAND No. 9: BONUS:

- (a) Bonus be provided to workers @ 20% on total gross salary every year before 30th November in one full instalment. The balance of Bonus/ex-gratia of 4% for the year ending 31st March, 1992 be paid.
- (b) Incentive Bonus should be paid to the workers @ 10% of the total sales.

DEMAND No. 10: FESTIVAL ADVANCE:

Festival advance should be sanctioned twice a year to all the workers, the amount of festival advance being twice the gross monthly gross salary. The advance Should be deducted every month in 10 equal instalments.

DEMAND No. 11: ADVANCE ON SALARY:

Advance of salary be provided to the workers at least once in a year, the amount of advance being five times the gross salary. The same be deducted in 10 equal instalments.

DEMAND No. 12: REST ROOMS:

A rest room with changing, lockers, toilet and bathing facilities should be provided to all the workers. The present toilet should be repaired.

DEMAND No. 13: RAINCOAT / UMBRELLA AND UNIFORM:

- (a) All workers be provided a rain coat/ umbrella every year before the monsoon season.
- (b) Three sets of uniform should be provided every year to the workers.

DEMAND No. 14: DISCOUNT FACILITY:

All the workers be given a discount of 40% on all items purchased at sales counters of Pastelaria or Tia Maria.

DEMAND No. 15: APPOINTMENT LETTERS/CONFIRMATION LETTERS:

All workers be given appointment letters immediately after joining duty and confirmation letters immediately on completion of 6 months of probation period. The training period should be for 6 months only.

DEMAND No. 16: OVERTIME:

All workers be paid overtime as per statutes.

DEMAND No. 17: PERIOD OF SETTLEMENT:

The settlement be for a period of 2 years from 1st December, 1992 to 30th November, 1994.

2. If so, to what relief the workmen are entitled?

5. On receipt of the reference, notices were issued to the workmen/Party I (For short 'Union') and the Employer/Party II (For short "Employer") and in pursuant to the said notice, the parties put in their appearance. The Union was represented by Shri Subhash Naik and the Employer was represented By Adv. Shri B. G. Kamat. In all the above three references, the Union filed its Statement of Claim. The employer however, did not file written statement on the ground that the dispute involved in the references were being settled between the parties. On 12-6-97, when all the above references were fixed for hearing, Shri Subhash Naik representing the Union and Adv. Shri B. G. Kamat, representing the employer submitted that the dispute between the parties in relation to all the above said references were settled by a common settlement dated 9-6-97 and they filed the terms of settlement dated 9-6-97 duly signed by the parties which is at Exb. 4. The parties prayed that Award be passed in terms of the said settlement which is common for all the above said references. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workmen. I therefore, accept the submissions made by the parties and pass consent award in terms of the settlement dated 9-6-97, Exb. 4 which is common for all the above 3 references.

ORDER .

1. The 34 workmen involved in the reference and their representatives Union agree that the termination of services of each of them w. e. f. 30-1-1994 is legal and justified.
2. The 34 workmen involved in the reference and their representative Union also agree that none of the workers will claim re-employment with the Management of M/s. A 'Pastelaria', The Mandovi Bakers & Confectioners in future.
3. In consideration of the above, the Management of M/s A'Pastelaria'. The Mandovi Bakers and Confectioners agrees to pay each of the worker amount of ex-gratia compensation at the rate of 15 days wages for each year of service, in addition to the statutory retrenchment compensation, notice pay and other dues such as gratuity under the Payment of Gratuity Act, 1972 and wages for unavailed leave tendered to each of the workman on 29th January, 1994, the details of which are mentioned in Annexure enclosed herewith and marked as Annexure 'A'.
4. The Management of M/s A'Pastelaria'. The Mandovi Bakers and Confectioners agrees to pay to each of the workman a lump sum payment of Rs. 1950.00 for the period from 1st December, 1992 to 30th January, 1994 in satisfaction of the claim

of arrears under Charter of Demands dated 5th February, 1993.

5. The 34 workmen involved in the reference and their representative Union agree with the management of M/s. A 'Pastelaria' that the amount of statutory bonus payable for the accounting year 1992-1993 is at the rate of 8.33% of the annual earnings and the workers will be paid an additional amount equivalent to 7.67% of their annual earnings of the said year as ex-gratia payment in addition to 8.33% of the amount of bonus tendered on 11-11-93. The Statutory bonus of 8.33% for the year 1992-93 and 1993-94, not collected by the workmen, if any will be paid separately.
6. The management of M/s A'Pastelaria'. The Mandovi Bakers and Confectioners will pay a lump sum amount of Rs. 50000/- to Shri Subhash Naik, Secretary, Goa Trade & Commercial Workers Union in satisfaction of the workers claim that may be taken up by the Union under the provisions of the payment of Bonus Act, 1965 for the accounting year 1993-94 etc. and other miscellaneous claims such as loss of wages to six workers on account of their continuing as probationers, loss of interest on amount tendered on 29-1-1994 to 34 workers.
7. The 34 workmen involved in the reference and their representative Union agree that this settlement of the disputes referred is a package deal between the parties and is in full and final settlement of all demands raised on behalf of the said workmen by the Union.
8. The Management agrees to deduct out of the total amounts payable to the workmen a sum equivalent to 5% of the amounts and pay the same to Shri Subhash Naik, Secretary, Goa Trade & Commercial Workers Union.
9. The Management agrees to issue employment certificate to each workman for the period he/she was employed with M/s A 'Pastelaria'.
10. The Management agrees to withdraw cases filed, if any, in Courts connected with present individual disputes and agrees not to file any case in the Court connected with the present Industrial Dispute.
11. The workmen and their representative Union agree that they shall not raise any demand directly or indirectly on any points covered under this settlement or related to it.

12. The said amount is being paid herewith at the time of signing this settlement.

ANNEXURE "A"

Sr. No.	Names	Years	Legal Dues	Others	Total	Amount Paid	Amount Due	Bank Loan	Union	Deduction	Net due	Cheque No.
1.	Naraciny Kunkolienkar	13	23934.00	14187.00	38121.00	23934.00	14187.00		1906.05		12280.95	835044
2.	Anand Kunkolienkar	13	30297.00	16545.00	46842.00		46842.00		2342.10		44499.90	835045
3.	Kashinath Kunkolienkar	13	26343.00	14190.00	40533.00		40533.00		2026.65	818.00	37688.35	835046
4.	Narayan Verenkar	12	19694.00	11693.00	31387.00		31387.00		1569.65		29817.65	835047
5.	Sebastian Vales	12	27474.00	14615.00	42089.00		42089.00		2104.45		39984.65	835048
6.	Ramesh Bhomkar	11	17950.00	10706.00	28656.00		28656.00		1432.80		27223.20	834049
7.	Gopal Nair	10	29071.00	15009.00	44080.00	29071.00	15009.00		2204.00		12805.00	835050
8.	Chandrakant Salelkar	4	8093.00	5867.00	13960.00		13960.00		698.00		13262.00	835051
9.	Anant Martis	10	17315.00	10254.00	27569.00	17315.00	10254.00		1378.45		8875.55	835079
10.	Shivappa Pujari	8	13519.00	8655.00	22174.00	13519.00	8655.00		1108.70		7546.30	835053
11.	Peter Fernandes	8	14877.00	8076.00	23953.00		23953.00		1197.65	638.00	22117.35	835054
12.	Cajetan Mendes	8	18148.00	10121.00	28269.00		28269.00		1413.45	81.00	26774.55	835055
13.	Mahadev Rosario	8	14100.00	8446.00	22546.00		22546.00		1127.30		21418.70	835056
14.	Francis Lobo	6	17415.00	9943.00	27358.00		27358.00		1367.90	1801.00	24189.10	835057
15.	Francis D'Souza	6	16666.00	8948.00	25614.00		25614.00		1280.70	501.00	23832.30	835058
16.	Gabriel Baptist	6	12585.00	7215.00	19800.00		19800.00		990.00		18810.00	835059
17.	Jacinto Dias	6	10844.00	6931.00	17775.00		17775.00		888.75	404.00	16482.25	835060
18.	Vilas Sawant	5	8630.00	5843.00	14473.00		14473.00	4325.00	723.65		9424.35	835061
19.	Ghanashyam Kunkolenkar	5	8421.00	5832.00	14253.00		14253.00		712.65	15.00	13525.35	835062
20.	Lawrence D'Souza	4	11961.00	6574.00	18535.00	11961.00	6574.00		926.75		5647.25	835063
21.	Ghanashyam Kundaikar	4	6662.00	5116.00	11778.00		11778.00		588.90	112.00	11077.10	835064
22.	Govind Bhandare	4	7434.00	5165.00	12599.00	7434.00	5165.00		629.95		4535.05	835065
23.	Daniel Rodrigues	4	8759.00	5700.00	14459.00		14459.00	3830.00	722.95		9905.92	835066
24.	Pramod Bhosle	3	7647.00	5069.00	12716.00		12716.00		635.80	162.00	11918.20	835067
25.	Vishnu Gauns	3	6403.00	4617.00	11020.00		11020.00		551.00		10469.00	835068
26.	Diego Mendonca	3	6498.00	5021.00	11519.00		11519.00		575.95		10943.05	835069
27.	Bonifacio Rodrigues	3	5961.00	4700.00	10661.00		10661.00		533.05		10127.95	835070
28.	Narendra Kunkollikar	3	5780.00	4436.00	10216.00		10216.00		510.80	151.00	9554.20	835071
29.	George Almeida	2	7461.00	4484.00	11945.00	7461.00	4484.00		597.25	243.00	3643.75	835072
30.	Sarita Volvoikar	2	3575.00	6660.00	7235.00		7235.00		361.75		6873.25	835073
31.	Ramesh Gauns	2	2884.00	3109.00	5993.00		5993.00		299.65		5693.35	835074
32.	Antonio Almeida	2	2675.00	3255.00	5930.00		5930.00		296.50		5633.50	835075
33.	Richard Andrade	2	2725.00	3183.00	5908.00		5908.00		295.40	207.00	5405.00	835076
34.	Nagesh Gawas	2	2630.00	3121.00	5751.00	2630.00	3121.00		287.55		2833.45	835077
35.	Shyam Gawas	1	1748.00	2478.00	4226.00	1748.00	2478.00		211.30		2266.70	835078
			426179.00	263764.00	689943.00	115073.00	5748.70	8155.13	34497.15	5133.00	527084.72	

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/97/5896

The following Awards dated 7-11-1997 in Reference No. IT/27/89 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 18th November, 1997.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/27/89

Workmen,
Rep. By Goa Trade &
Commercial Workers Union,
Velho Building, 2nd Floor,
Panaji Goa.

— Workmen/Party I

V/s

M/s Aqua Bakers Pvt. Ltd.,
Vasco-da-Gama.

— Employer/Party II

Workmen/Party I represented by Adv. Shri Raju Mangueshkar

Employer/Party II represented by Adv. Shri A. V. Nigalye

Dated: 7-11-1997.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order No. 28/11/89-LD dated 31-3-1989 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of M/s Aqua Bakers Private Limited, Chicalim, in terminating the services of the following 15 workmen w.e.f. 31-10-1988 is legal and justified?"

1. Shri Ramappa Mudur, Packing Helper
2. Shri Nemu Rathod, Production Helper
3. Shri Sabhajit Yadav, Production Helper
4. Shri Shankar Rathod, Production Helper
5. Shri Subhash Pawar, Production Helper
6. Shri Rajmanipal, Production Helper
7. Shri Keshava Gaude, Production Helper
8. Shri Shrikant Gavade, Production Helper
9. Shri Rohidas Pednekar, Production Helper

10. Shri A. C. Mohammed, Packing Helper
11. Shri Tukaram Keserkar, Packing Helper
12. Shri Linganath Gosavi, Packing Helper
13. Shri Arun Gosavi, Packing Helper
14. Shri John Britto, Packing Helper
15. Shri Ahmed Sayyed Ali, Loader

If not, to what relief the workmen are entitled?"

2. On receipt of the reference, a case was registered under No. IT/27/89 and registered A/D notice were issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen/Party I (For short "Workmen") filed their Statement of Claim which is at Exb. 2. The facts of the case in brief as pleaded by the workmen are that the Employer/Party II (For short "Employer") started their business of manufacturing Bread, Milk-Bread, Fruiti-bread etc. in their factory somewhere in January 1987 and that they have their factory situated at Chicalim, Vasco-da-Gama. That the Employer employed about 55 workers who were engage in manufacturing, packing, Bread-loading and other various activities. That 37 workers out of 55 workmen unionised themselves and became the members of 'Goa Trade and Commercial Workers Union'. That the salary drawn by a worker in the year 1987 was Rs. 10/- per day and in the year 1988, it was increased to Rs. 15/- per day. That the employer did not provide any extra facilities to the workmen in addition to their salary and they were denied compensatory offs though they worked overtime and also worked on Sundays and Holidays. That the employer was informed about the workers becoming the members of Goa Trade & Commercial Workers Union who subsequently, placed a Charter of Demands on the Employer. That on 14-10-88, the Employer terminated the services of the workman Shri Suhas Pawar and thereafter, the services of another workman Shri Basavaraj was also terminated and the employer on 25-10-88 displayed a notice on the Notice board about the retrenchment of the workmen. That, by the said notice, 15 workmen whose names are mentioned in the reference were retrenched with effect from the closing hours of 31-10-88 and the said workmen were advised to collect their dues, if any, from the Accountant during the working hours. That since the action of the employer in retrenching the services of the said 15 workmen was illegal and unjustified, and industrial dispute was raised before the Labour Commissioner. That by letter dated 3-11-88, the employer informed the Assistant Labour Commissioner that the workmen were on strike from 1-11-88. The employer also stated in the said letter that the number of workers required for running the factory was only 20 as per the suggestion/advice of the experts. That thereafter, by letter dated 18-12-88, the Union raised and issue of Charter of Demands before the Dy. Labour Commissioner. That the Dy. Labour Commissioner called both the parties for discussion by letter dated 9-1-89 and in the said letter, he also requested the Union to withdraw the strike. That by letter dated 15-1-89, the Union informed the managing Director of the employer that as per the request of the Dy. Labour Commissioner, the strike was being withdrawn w.e.f. 15-1-89 and that

all the workmen would report for duty from 16-1-89. That however, the employer did not allow the workmen to report for work though the strike was withdrawn. That in the meantime, the Dy. Labour Commissioner invited both the parties to resolve the issues pertaining to the retrenchment of the workmen, the Lock-out issue and the issue regarding the Charter of Demands and ultimately, the issue as regards the retrenchment of the workmen was referred to this Tribunal for adjudication. After holding discussions, the interim settlement was signed between the Union and the employer before the Dy. Labour Commissioner, Margao, wherein inter-alia, it was agreed that the workmen other than those who were retrenched would be paid 50% of the wages and that settlement was to be effective from 1-10-88 till 30-9-91. That inspite of the said settlement, the employer violated the terms and the factory was temporarily closed. The workmen contended that the action of the employer in retrenching them is patently illegal, malafide, unjustified and is with a view to victimise them. The workmen also contended that the employer did not follow the principles of "Last come-First go" while retrenching the workmen and also did not pay the retrenchment compensation at the time of termination of their services. The workmen therefore, claimed that they were entitled to be reinstated with full back wages and all other consequential benefits.

3. The Employer filed Written Statement which is at Exb. 3. The employer stated that it started its factory by taking loans from financial institutions and by investing funds from its own resources. The employer stated that its main product manufactured in the factory was Bread though, other ancillary products were also manufactured. The employer stated that after starting its factory, it employed number of employees including skilled, un-skilled workers and other office staff. The employer stated that most of the workers were employed on casual basis on account of fluctuating business, vagaries of market, competition from other producers and other work forces. The employer stated that it suffered heavy losses in the business and the financial burden relating to loans an interest also increased and therefore, it sought advise from its principals to curtail the losses and the principals after considering all necessary factors, advised the employer among other things to restrict its work force to about 20 workmen, and therefore, the employer decided to curtail its strength of workmen to about 20 workers an this fact was made known to all the workers time and again so that they could seek alternate employment. The employer stated that inspite of suffering heavy losses, it was paying good wages to the workmen and the said wages was much more higher than the minimum wages rates of wages prescribed by the Government. The Employer admitted that the letter dated 24-6-88 was received from Goa Trade and Commercial Workers Union informing the employer that the workers had joined its Union and that the said Union also served a Charter of Demands dated 24-8-88 demanding rise in wages and other benefits. The employer further stated that a substantial number of workmen had not joined the said Union. The employer stated that it held meetings with the Union representatives an in the said meetings, the union was informed about the financial position of the employer and its decision to reduce the workforce and the Union was further informed that the employer was

ready and willing to confirm 20 workmen on its permanent rolls with increased amenities including enhanced wages. The employer stated that the Union representatives were adamant and on account of the huge financial losses which the employer was suffering, the employer decided to reduce its work force w.e.f. 1-11-88 and accordingly, a notice was issued on 24-10-88 informing its decision to retrench 15 workers whose names are mentioned in the reference w.e.f. 31-10-1988. The employer stated that while retrenching the workmen, 'Last come-First go' rule was followed. Though the employer was not bound to follow the said rule. The Employer stated that immediately thereafter, some workmen struck work from the morning of 1-11-88 without any prior notice and they also started assaulting workers who had not joined the strike, assaulted the officers and ransacked the office and destroyed records. The employer admitted that a letter dated 27-10-88 was received from the Assistant Labour Commissioner, Vasco, in respect of alleged refusal of employment of 15 workmen and asking the employer to remain present on 1-11-88 for discussions. The employer stated that the discussions before the Asst. Labour Commissioner were adjourned from time to time without any progress mainly on account of the absence of the Union representative, and since during this period, the illegal activities of the striking workers had become unbearable, the employer filed a Civil Suit in the Court of Civil Judge, Senior Division, Vasco on 24-11-88 and by order, the Civil Judge, restrained the said workers from assembling within a radius of 100 mts. of the factory and from doing other activities as mentioned in the said order and since, inspite of the said order, the striking workers continued with their activities, the factory remained closed and the business of the employer came to a stand still. The employer admitted that on 15-1-89, it received a letter from the Union stating that the strike was being withdrawn w.e.f. 15-1-89. The employer however denied that the workers reported for work as promised and on the contrary, they continued with their acts of violence and that, this fact was brought to the notice of the concerned authorities. The employer stated that the conciliation proceedings held by Dy. Labour Commissioner, Margao ended in a failure on 3-1-89 due to the adamant attitude on the part of the Union. The employer admitted that in the matter relating to strike, a settlement was signed in the presence of the Dy. Labour Commissioner on 13-3-89 whereby the workers who had gone on strike has agreed to report for duties on 31-3-89. The employer stated that the workman/Union failed to perform their obligation under the said settlement though the employer was always ready and willing to perform their part of the settlement. The employer stated that when the matter was pending before the Dy. Labour Commissioner, Margao, it received a letter dated 12-11-88 from the President of the Gomantak Mazdoor Sangh stating that majority of the employer's workers had joined the said union and this fact was verified by the employer and found it to be proved. The employer stated that few workers who had joined Goa Trade & Commercial Workers Union had left the said Union and therefore, the said Union had no locus-standi to represent any of the workers including the retrenched workmen. The employer stated that the retrenched workmen had no right to claim employment as they were purely casual workers and had not completed even one year of con-

tinuous service in the employment of the employer and also most of the workmen were the chronic absentees who used to work at other places during the period of absenteeism. The employer further stated that the workmen S/Shri Ramappa Mudur, Shankar Rathod, Raj Mani Pal, Keshava Gavde, Rohidas Pednekar, A. C. Mohammed and John Britto had accepted their dues and had declared that they have no claim of whatsoever in nature against the employer and therefore, the dispute in existence if any, pertaining to the above said workmen does not survive as it is conclusively settled.

The employer stated that the reference is not maintainable for the reasons stated in para 20 of the Written Statement. The employer denied that the services of Shri Suhas Pawar were terminated on 14-10-88 or that the services of Shri Basavaraj were also subsequently terminated. The employer denied that its action in retrenching the 15 workmen is illegal and or unjustified and stated that there is /was no industrial dispute between the employer and its workmen. The employer stated that the claim of the workmen is without any substance and not maintainable under law and on facts of the case and prayed that award be passed holding the action of the employer in retrenching its 15 workmen as legal and justified. The workmen thereafter filed Rejoinder, which is at Exb. 4.

4. On the pleadings of the parties, issues were framed and the case was fixed for the evidence of the workmen. The records show that the case was fixed for the evidence of the workmen for the first time on 16-6-95 and thereafter, the case was adjourned several times at the request of the workmen for recording their evidence. Ultimately, on 29-9-97 when the case was fixed for recording the evidence of the workmen, Adv. Shri Raju Mangueshkar, representing the workmen submitted that he does not want to lead any evidence on behalf of the workmen. Thereafter, the case was fixed for the evidence of the Employer on 12-9-97. On the said date, Adv. Shri A. Nigalye, representing the employer submitted that he does not want to lead any evidence on behalf of the employer.

5. The reference to the dispute was made by the State Government at the instance of the workmen since they challenged the action of the employer, terminating their services w.e.f. 31-10-88, thereby raising the industrial dispute. The Bombay High Court, Panaji-Bench, in the case of V.N.S. Engineering services V/s Industrial Tribunal, Goa, Daman & Diu and another, reported in FJR Vol.71 at page 393 has held that he who approaches a court for a relief should prove his case, the test being that he who does not lead evidence must fail. The High Court further held that the provision of rule 10-B of the Industrial Disputes (Central Rules - 57) which requires a party raising a dispute to file the Statement of Demands relating only to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that a party who raised the industrial dispute is bound to prove the contents raised by him and an Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party of the dispute. In another case, i.e in the case of V. K. Raj Industries V/s Labour Court (I) and others, reported in

1981 (29) FLR 184, the Allahabad High Court has held that the proceedings before the Labour Court are judicial in nature even though, the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said act are applicable. The Allahabad High Court has further held that it is well settled that, after the party challenges the validity of an order and if no evidence is produced, the party invoking the jurisdiction must fail. The High Court also held that if the workmen fails to appear or to file Written Statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief. Therefore, the above decisions lay down the principles that when the action of the employer is challenged by the workman, the burden lies on him to prove that the said action is illegal and unjustified by leading proper evidence.

6. In the present case, the workmen were given several opportunities to lead evidence in support of their contention that the action of the employer in terminating their services is illegal and unjustified. However, in spite of the opportunities given, the workmen did not lead any evidence. Therefore, there is no material before me to hold that the action of the employer in terminating the services of the workmen was not legal and justified. In the absence of any evidence, it cannot be held that the termination of the service of the workmen is illegal and unjustified and consequently, the reference cannot be answered in favour of the workmen and no relief can be granted to them.

In the circumstances, I hold that the action of the employer in terminating the services of the workmen w.e.f. 31-10-88 is legal and justified and I pass the following order:

ORDER

It is hereby held that the action of the employer M/s Aqua Bakers Pvt Ltd., Chicalim, in terminating the services of the 15 workmen named in the reference, w.e.f. 31-10-88 is legal and justified.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/ 97/4743

The following Award dated 28-8-1997 in reference No. IT/46/87 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-officio Joint Secretary (Labour).

Panaji, 15th September, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding
Officer)

Ref. IT/46/87

Shri Prabhakar Ladu Sawal,
Ozari,
Pernem - Goa

— Workman/Party I

v/s

The Goa Co-operative Marketing
and Supply Federation Limited,
I. A. Latif Building,
Municipal Market,
Panaji - Goa

— Employer/Party II

Workman/Party I represented by Adv. A. V. Nigalye

Employer/Party II represented by Adv. G. K. Sardessai

Dated, 28th August: 1997.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 28th May, 1987, bearing No. 28/11/87-ILD referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Goa Coop. Marketing & Supply Federation Ltd., Panaji, in terminating the services of Shri Prabhakar Ladu Sawal, Salesman, w.e.f. 8-10-1986 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/46/87 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/Party I (For short "Workman") filed his statement of claim. The facts of the case in brief as pleaded by the workman are that the Employer/Party II, (For short "Employer") is a coop. Society and is engaged in the purchase, marketing and supply of essential commodities through its shops, outlets and other co-operative institutions in the State of Goa. That the employer is also engaged in the purchase and sale of other goods and articles throughout Goa through its several departmental stores. That the workman was employed with the employer as a Salesman from 22nd September, 1975 vide letter of appointment dated 1-9-1975 and at the time, when he was suspended, his salary was Rs. 350/- p. m. That from the time he joined the services, he discharged his duties with devotion, sincerity and to the best of his ability, and he worked under the supervision and direction of his superiors such as Managers, Pharmacists etc. That in the year 1979, while he was working as a Salesman at the Medicine counter at Pushpagandha Sahakar Bhandar, Vasco, he received a letter dated 11th December 1982 from the employer informing him that there was shortage of Rs. 23,368.33 paise at the said Bhandar and the workman was liable to pay Rs. 11,683.17 paise; and

that if he did not pay the said amount within 8 days from the date of the receipt of the said letter, action would be taken against him. That the workman replied to the said letter denying the allegations made against him. That on 17-12-87, he received a chargesheet signed by the General Manager alleging that he was responsible for the shortages and stating that a departmental enquiry will be held against him in respect of the charges levelled against him by Shri M. S. Salgaonkar. That the workman replied to the said chargesheet by letter dated 30-12-82 denying the charges levelled against him. That thereafter, the workman received another chargesheet dated 5th January, 1984 from the employer levelling the same charges made in the earlier chargesheet, signed by the General Manager and this charge sheet was issued when the enquiry into the earlier charge sheet was pending. That the workman replied to the said chargesheet dated 5-1-1984 by letter dated 12-1-84 raising the objection that a second enquiry into the same charges was bad in law when the first enquiry was pending. That the workman also addressed a similar letter dated 18-2-84 to the Inquiry Officer and brought to his notice the apprehension of the workman that he would be biased against him and in favour of the management. That in spite of the said objections, the employer and the enquiry officer continued with the enquiry and in the said enquiry by way of oral as well as documentary evidence, the workman proved that he was not in charge of the medicine counter and that he was working only as a Salesman. That the Inquiry Officer by his findings dated 23-12-84 held the workman liable for the shortages. That the findings submitted by the enquiry officer are contradictory and they are not supported by evidence on record, and hence, the enquiry is vitiated. That the workman received the findings of the Inquiry Officer alongwith the show cause notice dated 16-6-86 signed by the Chairman of the employer which was issued about one and half year after the findings were submitted by the enquiry officer thereby showing the casual approach and want of seriousness of the charges levelled against the workman. That the workman replied to the said notice by letter dated 5-7-86 denying that the charges were proved against him and stated that the findings of the enquiry officer were speculative and further without prejudice to the above also stated that the proposed punishment was disproportionate to the gravity of the alleged misconduct. That in spite of the said reply from the workman, the employer terminated his services w.e.f. 8th October, 1986. That thereafter, the workman raised an industrial dispute about the termination of his services and demanded reinstatement in service with full back wages. The workman contended that the enquiry held against him is illegal and not valid, and based on the evidence on record. The workman further contended that the termination of his services by the employer is illegal and unjustified and hence he is liable to be reinstated with full back wages.

3. The employer filed the written statement denying the contentions raised by the workman. The employer stated that the Board of Directors decided that a fair and reasonable opportunity should be given to the workman by an impartial enquiry official and therefore, Advocate Ulhas Pai Raikar was substituted in place of Mr. M. S. Salgaonkar. The employer stated that the workman participated in the said inquiry and all the objections raised by him were dealt with during the course of the enquiry. The employer denied that the enquiry officer was biased against the workman. The employer stated that the evidence on record indicated that the workman in fact was overall in charge of the counter during the relevant period and therefore, responsible for the shortages. The employer further

stated that the enquiry officer submitted his findings holding the workman guilty of the charges levelled against him and the findings given by him are the reasoned and proper findings based on evidence. The employer denied that the letter of termination issued by the employer is without application of mind or the same is without sanction from the Board of Directors as contended by the workman. The employer stated that the management considered the proceedings of the enquiry and the findings submitted by the inquiry officer and concurred with the same. The employer stated that considering the gravity of the misconduct and past records of the workman, the employer decided to terminate his services. The employer stated and that the punishment awarded to the workman is fair and proper and the letter of termination has been signed by the Chairman who has been duly authorised by the Board of Directors. The employer denied that the termination of services of the workman is illegal or unjustified or that the workman is entitled to reinstatement with full back wages. The employer stated that the workman is not entitled to any reliefs and the references is liable to be rejected.

4. The workman thereafter filed Rejoinder controverting the pleadings made by the employer in the written statement. On the pleadings of the parties, following issues were framed.

1. Whether the employer proves that the workman was guilty of misconduct while working as a Salesman in the medicine counter at Pushpagandha Sahakar Bhandar at Vasco da Gama and that there were shortages in the medicine counter ?
2. If so, whether the employer further proves that the employee was dismissed after a fair and proper enquiry was held against him ?
3. Whether the workman proves that the Enquiry Officer Pai Raikar was biased against him and was in favour of the management, as alleged ?
4. Whether the findings of the enquiry officer are just and proper and based on the evidence and facts in the case ?
5. If so, whether the action of the management of M/s Goa Coop. Marketing & Supply Federation Ltd., Panaji, in terminating the services of the employee is legal and justified and whether the same calls for any interference ?
6. What relief, if any, is the workman entitled to ?

5. By award dated 13-5-1989, my learned Predecessor held that the action of the management of M/s Goa Co-operative Marketing and Supply Federation Ltd. Panaji, the employer, in terminating the services of the workman is legal and justified and that he is not entitled to any relief. By the same Award, this Tribunal held that the domestic enquiry held against the workman is fair and proper and also that the findings of the enquiry officer were proper. The workman filed Writ Petition against the said Award in the Hon'ble High Court, Panaji Bench, Goa bearing Writ Petition No. 329/1989. By Judgement and order dated 10th January, 1997, the Hon'ble High Court set aside the Award of this Tribunal and remanded the matter back to this Tribunal to decide the matter afresh. The Hon'ble High Court held that this Tribunal had not re-appreciated the evidence properly and even if there was some re-appreciation, it was based on some erroneous premises.

6. After the Hon'ble High Court remanded the matter back to this Tribunal to decide the matter afresh, arguments were heard on the issue nos. 1 and 4. The issue No. 1 is pertaining to whether the workman is guilty of misconduct and issue no. 4 is whether the findings of the enquiry officer are just and proper. By my findings dated 25-3-1997, I held that the charge of misconduct levelled against the workman was not proved and the findings of the enquiry officer were not based on the evidence on record. Consequently, the issue nos. 1 and 4 were answered in the negative and the findings of the enquiry officer dated 22-12-1984 were set aside. The employer was afforded an opportunity to lead evidence on misconduct before this Tribunal in view of the Judgement of the Hon'ble Supreme Court in the case of Bharat Forge Limited V/s A. B. Zodge reported in 1996 (73) FLR 1754 wherein it has been held that if the findings of the enquiry officer are set aside, the enquiry is vitiated and the employer should be afforded an opportunity to prove misconduct before the Tribunal. Accordingly, both the parties led evidence on the merits of the case.

7. My findings on the issue Nos. 5 and 6 are as follows:

Issue No. 5:- in the negative and hence interference is calls for

Issue No. 6:- As per para 12 below

REASONS

8. Issue No. 5:- Adv. Shri Sardessai, the learned counsel for the employer submitted that the matter before this Tribunal is in two parts. The first part is whether there were shortage at the medicine counter and the second part is whether the workman is guilty of misconduct. He submitted that in the statement of claim the workman never denied that there were shortages and what he challenged was only the report of the enquiry officer, and hence, the issue whether there were shortage or not is not relevant. As regards misconduct, he submitted that the workman being at the counter at the relevant time as a Salesman is itself enough to prove his misconduct and his active participation in the act is not required, and the onus is on the workman to prove the contrary that is, he is not guilty of misconduct. He referred to the reply Exb. E-7 of the workman to the showcause notice and submitted that after the report of the enquiry officer was received by him, he never disputed that there were shortages but only denied his responsibility. Adv. Shri Sardessai submitted that if the enquiry is set aside on the ground of perversity of findings, the statements recorded in the enquiry should also be considered, besides the evidence recorded before this Tribunal, because the enquiry is vitiated as the findings of the enquiry officer are not proper and it is not set aside on account of violation of the principles of natural justice. He submitted that this principle is indicated in the case of Bharat Forge Limited V/s A. B. Zodge reported in 1996 (73) FLR 1754. He submitted that in the enquiry, the witness examined by the employer had stated that the workman was in charge of the medicine section and that he was liable for shortages. He then referred to the witnesses examined by the employer before this Tribunal namely, Smt. Geeta Somnath and Shri Shivkumar Juvekar, the Chief Accountant and the internal auditor respectively, and submitted that the misconduct committed by the workman is proved though the evidence of the said witnesses as also by the documents produced by them. Adv. Shri Sardessai submitted that in the examination

in chief, the workman has made a statement that there were no shortages but in his cross-examination indicates that there were shortage and he used to report to the Manager and therefore, the statement of the workman for the first time that there were no shortages cannot be accepted. He submitted that the assessment of the evidence in the Tribunal is not the same as in a Civil Court and the Tribunal may consider even the suspected involvement. He lastly submitted that suspicion of involvement should also be taken into consideration while finding out whether the punishment awarded is proper and justified because the employer is a public body and the fear is that the workman may again indulge in similar acts thereby putting burden on the exchequer.

Adv. Shri Nigalye, the learned counsel for the workman on the other hand submitted that the entire effort on the part of the employer is to shift the burden on the workman to prove that he is innocent, which according to him is not permissible under the law. He submitted that once the enquiry is vitiated either on account of the violation of the principles of natural justice or on account of the perversity of the findings, the evidence which is led in the enquiry proceedings cannot be looked into. He submitted that the workman in his statement of claim as well as in his reply to the show cause notice has denied all the charges levelled against him including the shortages. He submitted that there is no evidence on record before this Tribunal to show that the charges levelled against the workman are proved, and all the attempts on the part of the employer is to prove that the workman was in charge of the counter. He referred to deposition of employer's witness Mrs. Geeta Somnath and submitted that she has stated that the pharmacist was in charge of the medicine counter and that Shri Prakash Aiyanchi was the pharmacist for the entire period from 1979 to 1982. He submitted that the documents Exb. E-3 Colly, E-4 colly and E-5 Colly do not prove any charges against the workman, and stated that if at all, the employer ought to have produced Stock Liability Register, Sales Register, Purchase Register, challans, goods received receipts. He submitted that the witness Mrs. Geeta Somnath in her cross examination has admitted that as per the consolidated statement of shortages Exb-E-5 colly there was an excess amount of Rs. 5,614.84 paise and this amount was not considered while arriving at the shortages, and that the shortages might have occurred because of the theft which might have been committed by the employees. Adv. Shri Nigalye referred to the interrogations dated 16-6-88 filed by the workman before this Tribunal and the reply dated 12-8-88 filed by the employer to the said interrogatories and submitted that the said interrogatories were pertaining to the pharmacists and the other employees. He then referred to the interrogatory No. 3 and submitted that in the reply to the said interrogatory, the employer has admitted that though the employer has admitted that though chargesheet were issued to the employees as regards shortages, no inquiry was held and as regards pharmacists, Shri Prakash Aiyanchi, only recovery proceedings were initiated against him. Adv. Shri Nigalye submitted that the above act on the part of the employer is discriminatory. he relied upon the decision of the Supreme Court in the case of Mohan Lal V/s The Management of M/s Bharat Electronics Ltd. reported in AIR 1981 SC 1253 in this respect. He submitted that the evidence of Shri Shivkumar Juvekar, the internal auditor, also cannot be relied upon as he has not produced the Tentative audit report and the tentative balance sheet and statement of account for the years 1972 to 1982. he submitted that the said witness has admitted in his cross examination that the auditor of

the Registrar has remarked in the audit report for the years 1979-80 and 1980-81 Exb. E-6 (colly) that the amount of shortages is not acceptable to the audit and therefore, the correctness of the same cannot be certified. He contended that in order that the workman could be held liable for shortages, entrustment of the goods ought to have been proved. He submitted that the evidence led by the employer does not prove that the workman is liable or responsible for the shortages as alleged by the employer. He further submitted that no evidence has been led by the employer as regards the past conduct of the workman nor as regards his gainful employment. He submitted that the past conduct of the workman was good and the workman is unemployed since the date of termination of his services. Adv. Shri Nigalye therefore submitted that the order of termination is liable to be set aside and the workman is entitled for reinstatement with full back wages.

9: I have given due consideration to the submissions made by both the learned counsels. Before I proceed to discuss on the merits of the case, I would first deal with the contention of Adv. Shri Sardessai, the learned counsel for the employer, that the evidence recorded in the enquiry should also be considered alongwith the evidence before this Tribunal. His contention is that this is so because the enquiry is not set aside on the ground that the principles of natural justice were violated while conducting the enquiry but on the ground that the findings of the enquiry officer were perverse. In support of his this contention he has relied upon the decision of the Supreme Court in the case of Bharat Forge Limited (Supra). I do not agree with this contention of Adv. Shri Sardessai. In Bharat Forge case, the Hon'ble Supreme Court has not laid down the proposition as contended by Adv. Shri Sardessai. In the said case, the Hon'ble Supreme Court was dealing with the issue as to whether the employer should be allowed to lead evidence before this tribunal after the Tribunal holds that the findings of the enquiry officer are perverse. The Hon'ble Supreme Court held that the domestic enquiry is vitiated on two counts i.e. either when the principles of natural justice are not followed or when the findings given by the enquiry officer are perverse. The Hon'ble Supreme Court held that on either of the above two counts, the enquiry is liable to be set aside and in that event, the employer has an opportunity to lead evidence before the Tribunal in support of the charge. No distinction can be made when the enquiry stands set aside on the ground that the findings are perverse or on the ground that principles of natural justice are violated, as ought to be made by Adv. Shri Sardessai. Once the enquiry is held to be vitiated on either of the above grounds, it means there is no enquiry in the eyes of law, and consequently, no statement recorded in the enquiry can be looked into or considered. I agree with the submissions of Adv. Shri Nigalye, the learned counsel for the workman, in this respect. I am supported in my view by the Judgment of the Bombay High Court in the case of Vinayak Shetye V/s M/s Kismet Pvt. Ltd. and another reported in 1984 ILLJ 203. In the said case, the Bombay High Court at para 7

of its judgement has held that once the enquiry has been rejected and the employer has been given the opportunity to prove misconduct by adducing independent evidence before the Labour Court, the matter before the Labour Court would have to be judge on the basis of such evidence as was adduced before the Labour Court and the statements made during the enquiry proceedings have to be ignored. Therefore, whether the misconduct is proved or not will have to be judged from the evidence adduced by the employer before this Court and the evidence adduced during the enquiry proceeding cannot be considered. In view of the above matter, I now proceed to give my findings on the merits of the case.

10. It is not in dispute that the workman was working at the medicine counter of Pushpagandha Sahakar Bhandar, at Vasco, for the period from 31-12-1979 to 1-1-1982. The charge sheet dated 5-1-1984 has been produced at Exb. E-2. As per the said charge sheet, the charge against the workman is that while he was working at Pushpagandha Sahakar Bhandar at Vasco, at medicine counter for the period from 31-12-1979 to 1-1-1982, shortages were found to the tune of Rs. 23,368.33 paise and he being the Salesman at the said counter was liable for the shortages to the tune of Rs. 11,684.17 paise. The contention of Adv. Shri Sardesai, the learned counsel for the employer is that the workman never denied that there were shortages at the medicine counter and that he denied for the first time in his deposition recorded before this Tribunal that there were shortages. He has relied upon the reply (Exb-E-7) of the workman to the show cause notice in this respect. His contention is that once the shortages were admitted and also that he was at the medicine counter as a Salesman during the relevant time, this fact is itself enough to prove his misconduct and his active participation need not be proved. According to him, in these circumstances the onus is on the workman to prove that he is not guilty of misconduct. I do not agree with this contention of Adv. Shri Sardesai. I have gone through the reply (Exb-E-7) of the workman to the show cause notice after inquiry officer had submitted his report. It is true that the said reply, there is no specific denial about shortages. However, at para 10 of the statement of claim filed before this Court, the workman stated that he replied to the charge sheet dated 5-1-1984 by letter dated 12-1-84. This averment of the workman has not been denied by the employer in its written statement. If it is the contention of Adv. Sardesai that the workman denied about the shortage for the first time before this Tribunal, the employer could have contradicted the workman by showing to him his reply to the chargesheet in his cross examination. This was not done by the employer. The reply to the showcause notice which is after the receipt of the enquiry report cannot be used to say that the workman never denied that there were shortages. The main document would have been the reply to the charge sheet. Even assuming that there was no denial from the workman that there were shortages, still the onus would not shift on the workman to prove that he is not guilty of misconduct. Merely because the workman was working at the medicine counter does not mean that he is responsible for the shortages unless it is proved that he was in charge of the said counter or that he was the only

person who was working at the said counter. Since it is the employer who has charged the workman for misconduct, the burden is on the employer to prove the said charge and it is not for the workman to prove that he is not guilty.

11. As per the chargesheet, the shortages have occurred during the period from 1979 to 1982 and during this period, the workman was working at the medicine counter. The workman has not disputed that he was working at the medicine counter during the above said period. His contention is that he was working as the Salesman and the chargesheet Exb.E-2 also states that he was working as the Salesman. The employer has examined two witnesses in support of its case namely, Smt. Geeta Somnath, the Chief Accountant and Shri Shivkumar Juvekar, the Internal Auditor. Smt. Geeta Somnath in her evidence has stated that the workman was appointed as a Salesman at the Pushpagandha Sahakar Bhandar at Vasco and the shortages occurred at the medicine counter during the period 1979 to 1982 when the workman was working there. She has stated in her evidence that besides the workman, one Mr. Prakash Aiyanchi and one Mr. Borad were working at the said counter as Pharmacists during the said period, and all of them were responsible for the shortages. She has further stated that stock verification was done every six months and at that time, total value of the stock is recorded on a register known as Stock Liability Register and that there are also registers known as Purchase Register and Sales Register wherein the total value of goods purchased and goods sold are shown respectively. She has stated that the balance is arrived at from the total value at the stock and the total value of the goods sold. She has further stated that after the stock verification, physical verification of the stock is taken item wise and shortages are arrived at on comparing the consolidated value of stock with the said balance. She has produced the consolidated stock statement for the period from 31-12-79 to 7-5-82 at Exb. E-3 colly, and the physical verification stock statement for the period from 31-12-79 to 7-5-82 at Exb. E-4 colly. She has also produced the consolidated statement of shortages Exb-5 colly for the period from June 1978 to December 1983 which is prepared by the Manager and submitted to the head office. It is to be seen how far the above said document namely the consolidated stock statement (Exb.E-3 colly), physical verification stock statement (Exb.E-4 colly) and the consolidated statement of shortages (Exb. E-5 colly) establish any charge against the workman. Exb. E-3 colly are the consolidated stock statement; Exb. E-4 colly are the physical verification statement and Exb. E-5 colly are the consolidated statement of shortages. All these documents have been produced by the employer to prove that there were shortages. The workman in the cross examination of the witness Smt. Geeta Somnath had disputed the consolidated stock statement Exb. E-3 colly and the physical verification statement Exb-E-4 colly. She has stated in her deposition that the employer had maintained the Purchase Register and the Sales Register and the Purchase Register shows the total value of the goods purchased and the Sales register shows the total value of the goods sold. She has stated in her cross examination that she does not know what was the value of the stock at the time when the workman was employed at the Bhandar as also what was the value of the goods purchased and the value of the goods sold at the medicine counter during the period from 1979 to 1982. She has further stated that the employer maintained a stock liability register, and that it reflects the value of the total stock and the value of the total sales. She has further stated in her

cross examination that the shortages are derived after verifying the stock liability register purchase register and the sales register. Therefore, from the above evidence, it is evident that the purchase register and the Sales register as also the stock liability register are the important documents and as such the employer ought to have produced the said documents, and much so when the workman disputed the consolidated stock statement Exb. E-3 colly and the physical verification stock statement Exb. E-4 colly. Besides, according to the witness Smt. Geeta, the purchase register and the sales register were being written by the workman. However, the employer did not produce the said documents. As regards the document namely, the consolidated statement of shortages (Exb. E-5 colly) for the period from June 78 to December 83, according to the said witness, it was submitted by the Manager of the Sahakar Bhandar to the Head Office. In her cross examination, the said witness has stated that she does not know who has written the said consolidated statement of shortages nor she knows as to who has put the remarks in the column. She has further stated that the amount of Rs. 12,749.33 paise mentioned as shortages in the chargesheet Exb. E-2 issued to the workman for the period 31-12-79 to 31-12-80 is not correct and that the said amount is mentioned by mistake. According to her, as per the consolidated statement of shortages Exb. E-5 colly, the amount of shortages for the said period is Rs. 11,749.53 paise. However, in her further cross she has stated that in December 1979 the shortages were Rs. 2,142.85 paise; in December 1980 the shortages were Rs. 9,606.48 and in June 1980 there was an excess amount of Rs. 1,264.12 paise and considering all these amount, the shortages for the said period came to Rs. 10,485.21 paise. The said witness has further stated in her cross examination that in June 1978 there was an excess amount of Rs. 2,149.92 p. and this excess amount was not considered for the subsequent period, and also that in June 1979 there was an excess amount of Rs. 5,614.84 and this excess amount was not considered while arriving at shortages. She stated that the excess amount shown in the consolidated statement of shortages (Exb. E-5 colly) may be due to mistake in maintaining the records. To another question she stated that the reasons for excess amount may be that the amount of purchase were not shown in the purchase register. Therefore, from the evidence of the witness Smt. Geeta Somnath itself, it is evident that the document namely the consolidated statement of shortages Exb. E-5 colly is not reliable as it is not the correct statement of shortages. On the point of shortages, the employer has examined another witness namely Shri Shivkumar Juvekar who is the internal auditor of the employer. He has stated in his deposition that the period from 1979 to 1982, the total shortages were Rs. 23,368 approximately at the medicine counter and he has produced the audit report at Exb. E-6 colly, and has stated that the said audit reports are in respect of all the branches of the employer and the shortages

mentioned in the said report include the shortages which occurred at Pushpagandha Sahakar Bhandar, Vasco. He has further stated that the workman was working as the Salesman at the medicine counter, he is responsible for the shortages alongwith the Pharmacist Mr. Prakash Aiyanchi. In his cross examination when the audit report Exb. E-6 colly for the years 1979-80 was shown to him, he admitted that at page 33 of the general remark contained in the said audit report the auditor of the Registrar of Cooperative Societies has remarks under the heading "Stock Shortages" that the amount of shortages is not acceptable to audit and hence the correctness of the same cannot be certified. He has further admitted that in the audit report for the year 1980-81 Exb. E-6 colly at page 83 of the general remarks, the auditor of the Registrar of the Cooperative Societies has remarked under the heading "Stock/Cash shortages" that the suggestions made in the earlier audit report are not followed and hence the amount shown under the head is not acceptable to the audit. The above evidence therefore, shows that the auditor of the Registrar of Cooperative Societies had himself doubted the correctness of the shortages shown in the audit report Exb. E-6 colly for the years 1979-80 and 1980-81, and therefore, he refused to certify the shortages shown in the audit report for the said years. The shortages for which the workman has been charged includes the shortages for the period 1979-80 and 1980-81. In view of the above evidence and admission on the part of the witness Shri Juvekar in his cross examination, no reliance can be placed on the audit reports Exb. E-6 colly. Besides, as discussed earlier, Mrs. Geeta Somnath the Chief Accountant of the employer has admitted in her cross examination that the amount of shortages for the period from December 1979 to December 1990 comes to Rs. 10,485.21 paise and not Rs. 12,749.33 paise as mentioned in the charge sheet Exb. E-2. I therefore hold that the employer has failed to prove that there were shortages of the amount of Rs. 23,368.33 paise at the Pushpagandha Sahakar Bhandar, during the period 1979 to 1982.

12. Adv. Shri Sardessai has contended that the workman has in his reply to the show cause notice dated 5-7-1986 Exb. E-7 has admitted that there were shortages and that what he denied was only his responsibility. Assuming for a moment that the shortages are proved or that the shortages are admitted by the workman, still the question is whether the workman can be held responsible for the said shortages. The letter of appointment issued to the workman is on record as Exb. E-1 which is dated 22-5-75. This letter of appointment states that he is appointed as a Salesman. The charge sheet dated 5-1-1984 Exb. E-2 issued to the workman also states that he was working at the Medicine Counter of the Pushpagandha Sahakar Bhandar, Vasco as a Salesman. Now, merely because the workman was working at the medicine counter as the Salesman, he cannot be held liable for the shortages.

According to me, the employer ought to have proved the entrustment of the goods with the workman or that he was in charge of the said counter so as to hold him liable for the shortages. The question perhaps would have been different if the workman was the only person who was working at the medicine counter. The evidence on record show that alongwith the workman, one Mr. Prakash Aiyanchi was also working as the pharmacist at the medicine counter. It is the case of the employer that shortages are divided equally between the pharmacist Mr. Prakash Aiyanchi and the workman as they were working at the counter during the relevant period. But, as per the evidence of Mrs. Geeta Somnath, the Chief Accountant, besides the pharmacist Mr. Prakash Aiyanchi, another pharmacist by name Mr. Barad was also working at the medicine counter during the relevant period. This is stated by her in her examination in chief and she further stated that all the three persons are responsible for the shortages. However, it is pertinent to note that the employer has divided the shortages only between the workman and Mr. Prakash Aiyanchi. No explanation has come forth as to why Mr. Barad was also not held responsible for the shortages alongwith the workman and Mr. Prakash Aiyanchi. During the course of the evidence, an attempt has been made by the employer to show that the workman was in charge of the medicine counter. The employer has produce the physical stock verification statement Exb. E-4 colly. The employer has produced total 6 files. However, there is a rubber stamp "in charge" below the signature of the workman on the statements contained only in file No. 5. There is no such rubber stamp on any of the statements in the other files. When a specific question was put to the witness Mrs. Geeta Somnath in her cross examination, she stated that she cannot say why the stamp "in charge" was put on the statements in file No. 5 of Exb. E-4 colly and not on the statements in the other files. There is absolutely no evidence to show that the workman was in charge of the medicine counter. On the contrary, the letter of appointment Exb. B-1 and the charge sheet Exb. E-2 clearly show that the workman was appointed as Salesman. If the workman was appointed as the in charge after his letter of appointment Exb. E-1 then, the employer would have mentioned so in the charge sheet Exb. E-2. Besides, Mrs. Geeta Somnath, the witness for the employer, who is the chief Accountant has herself stated in her deposition that the workman was working as the Salesman at the medicine counter. Similarly, the other witness Shri Shivkumar Juvekar, the internal auditor of the employer has also stated in his deposition that the workman was working as a Salesman at the medicine counter. Therefore, it is obvious that the employer has failed in its attempt to show that the workman was working as the incharge at the medicine counter. Another important factor which is to be considered is the statement made by the witness Smt. Geeta Somnath in her cross examination. She has stated that the shortages might have been occurred because of the

theft which might have been committed by the employees, and she has further stated that she cannot say which employee might have committed the theft of the goods. Also, in the cross examination of the workman, it was suggested to him that he had made a representation to the employer that he was not the only person responsible for the shortages and that Mr. Aiyanchi and other employees at the counter are also responsible for the same. It was further suggested to the workman that in his representation made to the Manager on receipt of his report during the period 31-12-79 to 15-5-82, he had stated that the shortages shown to him in his report are more than the actual shortages and that he had mentioned the amount of shortages. These suggestions were denied by the workman. Now, if the above representation were made by the workman to the employer and the Manager, the employer ought to have produced them and contradicted the workman. These representations would have been very material piece of evidence against the workman. However, for reasons best known to the employer, no such representations were produced. Adv. Shri Sardessai has sought to argue that the statements recorded in the enquiry proceedings should also be considered. I have already given my findings above that once the enquiry is set aside, the statement of the witnesses recorded in the enquiry cannot be considered. However, even if the said statements of the witnesses examined by the employer in the enquiry are considered, I am of the view that the offence alleged against the workman is not proved. I have already held so while giving my findings dated 25-3-97 on the issue Nos. 1 and 4. Therefore: considering the entire evidence on record and, in the light of what is discussed above, I hold that the employer has failed to prove charge of misconduct levelled against the workman in the charge sheet dated 5-1-1984 Exb. E-2. I further hold that since the charge of misconduct is not proved against the workman, the action of the employer in terminating the services of the workman is illegal and unjustified and hence, interference is called for. In the circumstances, I answer the issue No. 5 accordingly.

Issue No. 6:- I have held that the termination of the services of the workman by the employer is illegal and unjustified. The next question is what relief should be granted to the workman. The ordinary rule is that the workman should be reinstated in service with full back wages once the termination is held as illegal and unjustified, unless there are sufficient reasons to deviate from this normal rule. In the present case, I do not find any reasons to deviate from this normal rule. Adv. Shri Sardessai has sought to argue that the employer is a public body and no reinstatement should be granted to the workman as he is likely to indulge in similar acts thereby putting the employer in financial loss. In the first place, I have already held that no charge of misconduct is proved against the workman, as there is no evidence to prove that he is responsible for the shortages if at all. Therefore, the argument that the

workman is likely to indulge in similar acts does not hold good. Even otherwise, there is evidence on record to show that the Pharmacist, Mr. Prakash Aiyanchi was retained in service though he was also held responsible for the shortages alongwith the workman. Mrs. Geeta Somnath, the Chief Accountant of the employer, in her cross examination has stated Mr. Aiyanchi was suspended and his suspension was revoked to by order dated 30-4-82, and that after revoking his suspension, he was reinstated with full back wages. She has further stated in her cross examination that one Nalini Naik was chargesheeted for theft of cloth and was suspended and that she was subsequently reinstated with full back wages. She has made the above statements after verifying the records. Therefore, admittedly, if the employer has reinstated Mr. Aiyanchi and Nalini Naik after chargesheeting them for shortages and theft respectively, how the employer can deny this relief to the workman much so when he has been held not guilty of the charges. It would amount to illegal discrimination. There is no evidence on record to show that after the services of the workman were terminated, he was gainfully employed. Also there is no evidence on record as regard the past conduct of the workman. There is nothing on record to show that the past conduct of the workman was not good. Therefore, in the facts

and the circumstances of the case, it is just and proper to award reinstatement to the workman with full back wages. In the circumstances, I hold that the workman is entitled to reinstatement with full back wages and all other consequential benefits. Hence, I pass the following order:-

ORDER

It is hereby held that the action of the management of M/s Goa Co-operative Marketing and Supply Federation Limited, Panaji in terminating the services of the workman Shri Prabhakar Ladu Sawal, Salesman, with effect from 8-10-1986 is illegal and unjustified. The workman Shri Prabhakar Ladu Sawal is ordered to be reinstated in services with full back wages and all the other consequential benefits.

No order as to costs.

Inform the Government accordingly.

Sd/
(AJIT J. AGNI),
Presiding Officer
Industrial Tribunal.